EXHIBIT 22

ATTACHMENT 2

Supporting Declarations of Grower Petitioners
(Exhibits A-W)

EXHIBIT A

DECLARATION OF HARRISON WEBER ON BEHALF OF PETITIONER RED RIVER VALLEY SUGARBEET GROWERS ASSOCIATION

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF HARRISON WEBER ON BEHALF OF PETITIONER RED RIVER VALLEY SUGARBEET GROWERS ASSOCIATION

I, Harrison Weber, declare and state as follows:

1. I am the Executive Director for the Red River Valley Sugarbeet Growers Association ("RRVSGA") and am authorized to make this declaration on behalf of RRVSGA, based upon my personal knowledge. I have been Executive Director of RRVSGA since December 2019. Prior to joining RRVSGA, I worked at the Minnesota Soybean Growers Association and the North Dakota Soybean Council.

2. I grew up in Casselton, North Dakota, and have played an active role on our family farm since as long as I can remember. I took numerous internships and jobs throughout college and law school to expose myself to as many areas of agriculture as possible, including Ag retail, Ag lending, estate/tax planning for farms, water law, working as a cattle hand on a ranch, and clerking for the Senate Ag Committee at the North Dakota legislature. I received a Bachelor of Science in Business Administration from Valley City State University and a Juris Doctor degree from the University of North Dakota Law School.

3. As Executive Director of RRVSGA, I provide leadership in navigating issues of importance to our sugarbeet farmer members, including issues related to EPA's recent decision to revoke all tolerances for use of chlorpyrifos on sugarbeets, despite EPA's prior determination that such use was safe. I submit this declaration in support of the (i) petition challenging the United States

Environmental Protection Agency's ("EPA") Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule) and EPA's denial of the request for an administrative stay of the Final Rule; and (ii) petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos, which is set to take effect on February 28, 2022.

4. RRVSGA was formed in 1926 for the purpose of representing growers who grew sugarbeets for the old American Beet Sugar Company, later to become the American Crystal Sugar Company. American Crystal Sugar Company became a cooperative in 1973 and the membership of the RRVSGA is virtually identical to the shareholders of American Crystal Sugar Company. The American Beet Sugar Company built the first sugarbeet processing factory in East Grand Forks, Minnesota. It was dedicated in October 1926. Additional factories were built in Moorhead, Minnesota in 1948; in Crookston, Minnesota in 1954; in Drayton, North Dakota in 1965; and in Hillsboro, North Dakota in 1974.

5. The RRVSGA is the voice for over 2,600 sugarbeet growers and plays a lead role in addressing state and federal legislative issues on behalf of its members. For example, RRVSGA educates members of Congress and agency staff on farming practices and legislative and trade matters and their impact on growers. RRVSGA also works with the Minnesota and North Dakota state legislatures on issues that may affect growers, including issues on transportation,

labor, environmental, taxes, public research, workers compensation insurance, and regulatory issues. RRVSGA also invests significant grower funds in public research programs, including working alongside Minn-Dak Farmers Cooperative and Southern Minnesota Beet Sugar Cooperative to invest in research with North Dakota State University and University of Minnesota. This work has included research related to many different aspects of sugarbeet farming, from pesticide application rates/timing to sugarbeet root maggot fly tracking. RRVSGA also conducts public relations programs, and provides information to growers regarding employment, transportation, and other regulations. The interests that RRVSGA 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 RRVSGA.

6. I have solicited and reviewed information from members of RRVSGA regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on eleven high-benefit crops, including sugarbeets, which is set to take effect on February 28, 2022, is not granted.

7. Our industry depends significantly on chlorpyrifos as a critical, and in certain circumstances the only, crop protection tool available to fight pests and to

meet the sugar demands of the U.S. food economy. In 2020, 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.

8. Losing chlorpyrifos as a critical tool would be devastating to our sugarbeet 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 available 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.

9. EPA's decision to revoke the tolerances for chlorpyrifos was flawed for multiple reasons. The Final Rule revoking the tolerances is inconsistent with the Agency's own scientific record on chlorpyrifos with respect to the safety of certain uses, including use on sugarbeets. In fact, EPA turned a blind eye to scientific data and safety findings in its own 2020 Proposed Interim Decision for Chlorpyrifos, U.S. EPA, Proposed Interim Decision for Chlorpyrifos, EPA-HQ-OPP-2008-0850-0971, (Dec. 3, 2020) (hereinafter, "PID"), https://www.epa.gov/sites/default/files/2020-

12/documents/chlorpyrifos_pid_signed_120320.pdf, improperly canceling tolerance uses that the Administrator can and should leave in effect under the requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

10. The PID carefully considered 11 crop uses in specific regions and determined that those uses "will not pose potential risks of concern with an FQPA safety factor 10x." But even after reaffirming the PID's safety findings in the Final Rule, EPA simply refused to apply those findings when it determined to revoke the tolerances for the safe high-benefit crop uses, including sugarbeets. EPA clearly has the necessary data, the ability, and the authority to preserve the tolerances for these 11 uses.

11. EPA's overbroad revocation upends decades of Agency-approved chlorpyrifos use, where EPA otherwise could lawfully and based on sound science leave in effect the tolerances for the 11 high-benefit crops—including sugarbeets. The Final Rule fails to consider the sugarbeet growers' and processors' reliance interests in applying safe and effective pesticides. Had EPA properly weighed those significant interests, it would have left the tolerances in effect for which it could have made a safety finding under the FFDCA, while revoking the tolerances where it could not.

12. EPA's scientific record, which supports maintaining 11 high-benefit crops in certain areas is highly conservative and unnecessarily protective. Yet

even with these unnecessary conservatisms (including a 10x safety factor and an overly conservative water model), these 11 high-benefit uses, including sugarbeets, were found to be safe. EPA's Final Rule affirms these safe uses.

13. EPA justified its decision to revoke all chlorpyrifos tolerances by assuming that *all* currently registered uses are the baseline against which it must make its FFDCA safety evaluation. However, EPA is fully capable of cancelling the tolerances where it cannot make the FFDCA safety finding and leaving in place the tolerances for the 11 high-benefit safe uses, including sugarbeets.

14. Section 408(b)(2) of the FFDCA directs that EPA may "leave in effect a tolerance . . . if the Administrator determines that the tolerance is safe." And "[t]he Administrator shall modify or revoke a tolerance if the Administrator determines it is not safe." In making this finding, EPA must consider the "result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information."

15. The Final Rule's conclusion that EPA cannot make the required safety finding is premised on a faulty baseline of *all* chlorpyrifos tolerances and *all* chlorpyrifos registrations remaining in place. To fail to leave in effect the 11 tolerances for which the PID's science-based conclusions have already supported a safety finding runs afoul of the express direction in Section 408(b)(2).

16. EPA's approach sets a very negative precedent that the Agency could broadly revoke all tolerances, regardless of whether registrants, users, or EPA's own career scientists have demonstrated the safety of the continued food use of a pesticide under the proper set of conditions on specific crops, including sugarbeets.

17. In fact, while tolerances exist for sugarbeet roots, sugarbeet tops, dried beet pulp, and sugarbeet molasses, the record shows that no residues have been detected. As such, analyses conducted by EPA using the tolerance level as an exposure level are further conservative.

18. EPA released the Final Rule with a press release, EPA Takes Action to Address Risk from Chlorpyrifos and Protect Children's Health (August 18, 2021) (https://www.epa.gov/newsreleases/epa-takes-action-address-risk-chlorpyrifos-and-protect-childrens-health), that stated that its decision was an "overdue step to protect public health" and "following the science." These statements are inconsistent with EPA's scientific record with respect to the 11 high-benefit crops identified as safe in the PID, including sugarbeets.

19. By revoking all tolerances, EPA also attacked the safety of prior uses of chlorpyrifos in the eyes of the public. At the time it issued its Final Rule, EPA stated in its press release that its action was necessary to "ensure children, farmworkers, and all people are protected from the potentially dangerous consequences of this pesticide," even though its own expert scientists found that 11

high-benefit uses of chlorpyrifos, including sugarbeets, in select areas of the country were safe and not of concern. In its Final Rule, EPA did not refute or provide any evidence to contradict these safety findings.

20. On October 29, 2021, the American Sugarbeet Growers Association (ASGA) filed objections with EPA to the Final Rule on our behalf, as a member of ASGA (Long Decl. Ex. F). In the objections, ASGA also requested an evidentiary hearing. In a separate filing, also on October 29, 2021, ASGA requested that EPA stay the decision revoking all chlorpyrifos tolerances, or at a minimum the tolerances for sugarbeets, until there is a final Agency resolution of all the critical issues that we raised in our objections (Long Decl. Ex. G). EPA overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

21. The decision to revoke tolerances of chlorpyrifos will negatively impact our members not just economically but also through creating uncertainty regarding the safety of food products in commerce. EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on the eleven high-benefit agricultural crops, including sugarbeets.

22. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on the eleven high-benefit agricultural crops, including

sugarbeets, and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on the eleven high-benefit agricultural crops, including sugarbeets, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.

Harrison Weber

EXHIBIT B

DECLARATION OF BRENT BALDWIN IN SUPPORT OF PETITIONERS AMERICAN CRYSTAL SUGAR COMPANY AND RED RIVER VALLEY SUGARBEET GROWERS ASSOCIATION

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

U.S. BEET SUGAR ASSOCIATION; AMERICAN SUGARBEET GROWERS ASSOCIATION; RED RIVER VALLEY SUGARBEET GROWERS ASSOCIATION; SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE; AMERICAN CRYSTAL SUGAR COMPANY; MINN-DAK FARMERS COOPERATIVE; 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; AMERICAN FARM BUREAU FEDERATION; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF BRENT BALDWIN IN SUPPORT OF PETITIONERS AMERICAN CRYSTAL SUGAR COMPANY AND RED RIVER VALLEY SUGARBEET GROWERS ASSOCIATION

I, Brent Baldwin, declare and state as follows:

1. I serve as President for Baldwin Farms, Inc., a family-owned farm located near Saint Thomas, North Dakota, which is in the Red River Valley, and approximately 30 miles from the Canadian border. I am authorized to make this declaration on behalf of Baldwin Farms, based upon my personal knowledge.

2. I submit this declaration in support of the (i) petition challenging the United States Environmental Protection Agency's ("EPA") Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule) and EPA's denial of the request for an administrative stay of the Final Rule; and (ii) petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos, which is set to take effect on February 28, 2022.

3. Unless the Final Rule is stayed, at least with respect to sugarbeets, Baldwin Farms will be prohibited from using chlorpyrifos during the 2022 growing season. As explained below, that would cause immediate, substantial and unrecoverable economic loss for Baldwin Farms.

4. Baldwin Farms is a family farm approximately 8,500 acres in size. I farm with my parents, William ("Buzz") and LeAnn; my wife, Stephanie; our daughter, Samantha; and our two sons, Hunter and Braylon. I am a fourth-generation farmer, and I am hoping that my children and grandchildren will one day be the fifth and sixth generations to take over the family farm. My family

traces its start in the sugarbeet industry back to 1926. My great-grandfather started with a small acreage, then my father started farming with my grandfather in 1964. My father took over the farm after my grandfather's death and expanded the farm.

5. Baldwin Farms grows approximately 2,500 acres of sugarbeets. We treat our sugarbeet and spring wheat crops with chlorpyrifos. In an average year at Baldwin Farms, we apply chlorpyrifos to 2,000 total acres of sugarbeet crops. We also apply chlorpyrifos to our spring wheat crop. Sugarbeets account for approximately 65% of Baldwin Farms' annual revenue. Approximately 75% of Baldwin Farms' annual revenue comes from crops on which we apply chlorpyrifos.

6. Baldwin Farms is a member of the American Crystal Sugar Company ("ACSC"), a farmer-owned sugarbeet cooperative that processes sugarbeets for sugar production. Founded in 1973, the cooperative has 2,600 members—representing 643 farms and approximately 400,000 acres—who own shares in the cooperative. My father, Buzz, has served on ACSC's board.

7. Baldwin Farms is also a member of the Red River Valley Sugarbeet Growers Association. The Red River Valley Sugarbeet Growers Association represents the growers for ACSC and was organized to improve the sugar industry in the Red River Valley and to promote and protect of the interests of its members throughout state and federal legislative activities.

8. ACSC's members receive a beet payment based on quantity of sugarbeets delivered to ACSC for processing, taking into account the pounds of sugar and co-products to be extracted from the sugarbeets. Following the sugarbeet harvest, ACSC estimates the "beet payment" by projecting the gross revenues and expenditures attributable to the crop. Members are paid a percentage of their beet payment in three installments throughout the year. When ACSC performs well, members receive a higher payment. If ACSC performs poorly, each member's payment is less. Because the ACSC's fixed costs must be covered every year, each member of the cooperative is dependent on the other members to deliver their allocated acres of good tonnage and high quality sugarbeets.

9. Baldwin Farms typically applies chlorpyrifos to its sugarbeet crops every year, approximately four to six weeks after planting (usually in mid-June). Chlorpyrifos is critically important to our farm in protecting sugarbeets from destruction due to insects such as sugarbeet root maggot. Baldwin Farms has used chlorpyrifos to protect its sugarbeets for decades because it is highly effective, has favorable environmental characteristics, and is affordable. We carefully time applications to make sure they only occur at the right time and in the right place, if at all. This is done by scouting to determine when the population of sugarbeet root maggot flies is present and in high enough numbers that justify an application. At Baldwin Farms, chlorpyrifos is applied by licensed certified applicators, typically

through ground sprayers in the field. When chlorpyrifos is applied, no one other than the applicator is in the field during or immediately after its application. Use of chlorpyrifos on sugarbeets leaves no residues on the refined sugar produced by ACSC.

10. Baldwin Farms is located in a "hot spot" with a high incidence of sugarbeet root maggot infestation. For our farm, chlorpyrifos is the only tool that has been consistently effective in controlling the destructive sugarbeet root maggot by reducing the sugarbeet root maggot fly population, thereby decreasing the amount of eggs that are laid that would become feeding larvae. There are very few other commercially-available insecticides for treating sugarbeet root maggot, all are significantly more expensive than chlorpyrifos, and none are as consistently effective on my farm in controlling the sugarbeet root maggots that attack and consume sugarbeet crops. In addition, other insecticides often require multiple applications, increasing costs and potential environmental impacts. In prior years, chlorpyrifos has cost us approximately $7.50-$8 per acre to purchase. The alternative insecticides (which are less consistently effective than chlorpyrifos) cost approximately $25 per acre to purchase. This year, my retailer has told me that it would cost $26 per acre to purchase the next best insecticide. Not only are those alternative insecticides more expensive to purchase, but one of them requires the use of additional machinery. Moreover, unlike chlorpyrifos, that alternative

requires moisture to be activated but can be washed away by excessive rain. As a result, that alternative is not effective in drought or heavy rain conditions, making it an inferior product compared to chlorpyrifos. Without chlorpyrifos, sugarbeet growing costs at Baldwin Farms will increase significantly and sugarbeet crop yields will decrease significantly.

11. On August 30, 2021, EPA issued its Final Rule revoking all tolerances for chlorpyrifos use on sugarbeets and ten other crops, despite EPA's previous finding that use of chlorpyrifos on these 11 crops was safe in certain regions of the country, including North Dakota. This decision will have a devasting impact on the productivity of crops on my farm, including but not limited to my sugarbeet crops. Because of the extreme northern location of Baldwin Farms, I have fewer options for other crops that I can profitably grow. Sugarbeets are therefore highly important to my farm's economic viability.

12. For Baldwin Farms, a prohibition on using chlorpyrifos will likely lead to greater harm with every passing year, as the population of destructive sugarbeet root maggots grows with each growing season. This is why an immediate stay of the Final Rule is needed—pest infestation will be worse on my farm in 2023 if chlorpyrifos cannot be used during the spring of 2022.

13. For all these reasons, Baldwin Farms will suffer immediate, concrete, and irreparable harm if the revocation of tolerances for the use of chlorpyrifos on

sugarbeets goes into effect on February 28, 2022. As explained above, Baldwin Farms needs chlorpyrifos to treat its sugarbeets beginning this spring and there are no effective alternatives.

14. 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.

15. Given the cooperative nature of sugarbeet production, crop losses are not just felt by individual growers, but by all cooperative members. Yield 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.

16. With a prohibition on the use of chlorpyrifos, profits for Baldwin Farms will be significantly impacted. Based on my experience and knowledge of the effectiveness of chlorpyrifos on my farm compared to other treatments, as well as research conducted at North Dakota State University by Dr. Mark Boetel, I conservatively estimate that the prohibition on using chlorpyrifos will cause Baldwin Farms unrecoverable losses, which could be up to $200/acre ($400,000 when multiplied by all 2,000 of my sugarbeet acres), but could be greater or lesser depending on the sugarbeet root maggot population and environmental conditions. Such losses are highly significant for Baldwin Farms, which is already struggling to remain economically viable.

17. These immediate, irreparable and devastating economic impacts on our family farm will be exacerbated by inflation, which has increased the cost of operating a farming business (*e.g.*, fertilizer costs, fuel costs, chemical costs, and equipment costs) by over 30%. As a farmer, I cannot demand that suppliers sell me products and services at the prices Baldwin Farms needs to make a profit or break even. EPA's refusal to modify tolerances for chlorpyrifos in accordance with its safety findings could not have come at a worse time for Baldwin Farms.

18. I expressed many of these concerns over EPA's decision to revoke all tolerances for chlorpyrifos in an October 2021 objection letter to EPA (Long Decl. Ex. H). Those concerns are even more true today, as inflation and prices continue

to soar and plague the farming industry. As I explained in that letter, instead of inflicting irreparable harm on farmers, EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on sugarbeets. EPA overruled my objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

19. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on sugarbeets and success on the merits of the petition would fully redress the harms above by allowing our family farm to continue to use chlorpyrifos on sugarbeets and other crops, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.

Brent Baldwin

EXHIBIT C

DECLARATION OF CASSIE BLADOW ON BEHALF OF PETITIONER U.S. BEET SUGAR ASSOCIATION ("USBSA")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF CASSIE BLADOW ON BEHALF OF PETITIONER U.S. BEET SUGAR ASSOCIATION ("USBSA")

I, Cassie Bladow, declare and state as follows:

1. I am the President of the U.S. Beet Sugar Association ("USBSA") and am authorized to make this declaration on behalf of USBSA, based upon my personal knowledge. I have been President of USBSA since May 2020, and was formerly the Vice President as well as the Director of Government Relations at USBSA. I have been working on agriculture and related policy issues for over 10 years.

2. I grew up on a sugar beet farm in Minnesota and I hold a Bachelor of Science degree from North Dakota State University.

3. As president of USBSA, I provide leadership in navigating issues of importance to the nation's sugarbeet processing cooperatives.

4. The mission of the USBSA is to effectively communicate authentic information concerning the beet sugar processing industry, encourage the interchange of ideas to members of Congress and to Federal agency officials, and promote the honorable, economical, efficient and useful conduct of the beet sugar industry in the United States. The interests that USBSA 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 USBSA.

5. USBSA is a government affairs and industry trade association founded in Washington, DC in 1911. Membership in the organization is limited to

manufacturers of beet sugar in the United States. Currently, there are nine such firms, operating 22 factories that process refined white sugar, molasses, and dried beet pulp from sugarbeets grown in eleven states. The U.S. beet sugar processing industry is 100% farmer-owned cooperative in structure, and every factory operates with organized union workers.

6. 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.

7. I have solicited and reviewed information from members of USBSA regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on eleven high-benefit crops, including sugarbeets, which is set to take effect on February 28, 2022, is not granted.

8. Our industry depends significantly on chlorpyrifos as a critical, and in certain circumstances the only, crop protection tool available to fight pests and to meet the sugar demands of the U.S. food economy. In 2020, 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.

9. Losing chlorpyrifos as a critical tool would be devastating to our sugarbeet growers as well as our 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 available 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. 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.

11. EPA's decision to revoke the tolerances for chlorpyrifos was flawed for multiple reasons. The Final Rule revoking the tolerances is inconsistent with

the Agency's own scientific record on chlorpyrifos with respect to the safety of certain uses, including use on sugarbeets. In fact, EPA turned a blind eye to scientific data and safety findings in its own 2020 Proposed Interim Decision for Chlorpyrifos, U.S. EPA, Proposed Interim Decision for Chlorpyrifos, EPA-HQ-OPP-2008-0850-0971, (Dec. 3, 2020) (hereinafter, "PID"), https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf, improperly canceling tolerance uses that the Administrator can and should leave in effect under the requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

12. The PID carefully considered 11 crop uses in specific regions and determined that those uses "will not pose potential risks of concern with an FQPA safety factor 10x." But even after reaffirming the PID's safety findings in the Final Rule, EPA simply refused to apply those findings when it determined to revoke the tolerances for the safe high-benefit crop uses, including sugarbeets. EPA clearly has the necessary data, the ability, and the authority to preserve the tolerances for these 11 uses.

13. EPA's overbroad revocation upends decades of Agency-approved chlorpyrifos use, where EPA otherwise could lawfully and based on sound science leave in effect the tolerances for the 11 high-benefit crops—including sugarbeets. The Final Rule fails to consider the sugarbeet growers' and processors' reliance

interests in applying safe and effective pesticides. Had EPA properly weighed those significant interests, it would have left the tolerances in effect for which it could have made a safety finding under the FFDCA, while revoking the tolerances where it could not.

14. By this failure, EPA improperly minimized 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.

15. EPA's scientific record, which supports maintaining 11 high-benefit crops in certain areas is highly conservative and unnecessarily protective. Yet even with these unnecessary conservatisms (including a 10x safety factor and an overly conservative water model), these 11 high-benefit uses, including sugarbeets, were found to be safe. EPA's Final Rule affirms these safe uses.

16. EPA justified its decision to revoke all chlorpyrifos tolerances by assuming that *all* currently registered uses are the baseline against which it must make its FFDCA safety evaluation. However, EPA is fully capable of cancelling the tolerances where it cannot make the FFDCA safety finding and leaving in place the tolerances for the 11 high-benefit safe uses, including sugarbeets.

17. Section 408(b)(2) of the FFDCA directs that EPA may "leave in effect a tolerance . . . if the Administrator determines that the tolerance is safe." And

"[t]he Administrator shall modify or revoke a tolerance if the Administrator determines it is not safe." In making this finding, EPA must consider the "result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information."

18. The Final Rule's conclusion that EPA cannot make the required safety finding is premised on a faulty baseline of *all* chlorpyrifos tolerances and *all* chlorpyrifos registrations remaining in place. To fail to leave in effect the 11 tolerances for which the PID's science-based conclusions have already supported a safety finding runs afoul of the express direction in Section 408(b)(2).

19. EPA's approach sets a very negative precedent that the Agency could broadly revoke all tolerances, regardless of whether registrants, users, or EPA's own career scientists have demonstrated the safety of the continued food use of a pesticide under the proper set of conditions on specific crops, including sugarbeets.

20. In fact, while tolerances exist for sugarbeet roots, sugarbeet tops, dried beet pulp, and sugarbeet molasses, the record shows that no residues have been detected. As such, analyses conducted by EPA using the tolerance level as an exposure level are further conservative.

21. In addition to the financial harm, the sugarbeet industry is likely to suffer reputational harm as well. Based on EPA's Final Rule, purchasers of sugar are now asking our processors to report to them regarding any use of chlorpyrifos

on products, including uses that might have occurred before the revocation rules effective date of February 28, 2022. This is despite EPA's own finding in its scientific assessment that chlorpyrifos can safely be used on sugarbeets.

22. EPA released the Final Rule with a press release, EPA Takes Action to Address Risk from Chlorpyrifos and Protect Children's Health (August 18, 2021) (https://www.epa.gov/newsreleases/epa-takes-action-address-risk-chlorpyrifos-and-protect-childrens-health), that stated that its decision was an "overdue step to protect public health" and "following the science." These statements are inconsistent with EPA's scientific record with respect to the 11 high-benefit crops identified as safe in the PID, including sugarbeets.

23. By revoking all tolerances, EPA also attacked the safety of prior uses of chlorpyrifos in the eyes of the public. At the time it issued its Final Rule, EPA also stated in its press release that its action was necessary to "ensure children, farmworkers, and all people are protected from the potentially dangerous consequences of this pesticide," even though its own expert scientists found that 11 high-benefit uses of chlorpyrifos, including sugarbeets, in select areas of the country were safe and not of concern. In its Final Rule, EPA did not refute or provide any evidence to contradict these safety findings.

24. USBSA objects to the discontinuation of the 11 high-benefit chlorpyrifos uses, including use on sugarbeets, and along with the American

Sugarbeet Growers Association (ASGA), filed objections with EPA on October 29, 2021 (Long Decl. Ex. F). In the objections, USBSA and ASGA also request an evidentiary hearing. In a separate filing, also on October 29, 2021, USBSA and ASGA requested that EPA stay the decision revoking all chlorpyrifos tolerances, or at a minimum the tolerances for sugarbeets, until there is a final Agency resolution of all the critical issues that we raised in our objections (Long Decl. Ex. G). On February 22, 2022, EPA overruled these objections to the Final Rule and denied the requests for a hearing and a stay. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

25. The decision to revoke tolerances of chlorpyrifos will negatively impact our members not just economically but also through causing reputational harm and creating uncertainty regarding the safety of food products in commerce. EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on the eleven high-benefit agricultural crops, including sugarbeets.

26. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on the eleven high-benefit agricultural crops, including sugarbeets, and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on the eleven high-benefit

agricultural crops, including sugarbeets, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.

Cassie Bladow

EXHIBIT D

DECLARATION OF LUTHER MARKWART ON BEHALF OF PETITIONER AMERICAN SUGARBEET GROWERS ASSOCIATION ("ASGA")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF LUTHER MARKWART ON BEHALF OF PETITIONER AMERICAN SUGARBEET GROWERS ASSOCIATION ("ASGA")

I, Luther Markwart, declare and state as follows:

1. I am the Executive Vice President of the American Sugarbeet Growers Association ("ASGA") and am authorized to make this declaration 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 by filing its petition here—the continued use of chlorpyrifos consistent with EPA's previous safety findings—are central to the organizational purpose of ASGA.

4. I also oversee and manage the sugarbeet plot at the U.S. Department of Agriculture garden on the National Mall in Washington D.C. This plot is 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 revoking the tolerances for chlorpyrifos. This

declaration explains the adverse impact that will result if the petitioners motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on eleven high-benefit crops, including sugarbeets, which is set to take effect on February 28, 2022, is not granted.

9. Our industry depends significantly on chlorpyrifos as a critical, and in certain circumstances the only, crop protection tool available to fight pests and to meet the sugar demands of the U.S. food economy. In 2020, 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.

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 available 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. 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.

12. 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

13. 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.

14. EPA's decision to revoke the tolerances for chlorpyrifos was flawed for multiple reasons. The Final Rule revoking the tolerances is inconsistent with the Agency's own scientific record on chlorpyrifos with respect to the safety of certain uses, including use on sugarbeets. In fact, EPA turned a blind eye to scientific data and safety findings in its own 2020 Proposed Interim Decision for Chlorpyrifos U.S. EPA, Proposed Interim Decision for Chlorpyrifos, EPA-HQ-OPP-2008-0850-0971, (Dec. 3, 2020) (hereinafter, "PID"), https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0971, improperly canceling tolerance uses that the Administrator can and should leave in effect under the requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

15. The PID carefully considered 11 crop uses in specific regions and determined that those uses "will not pose potential risks of concern with an FQPA safety factor 10x." But even after reaffirming the PID's safety findings in the Final

Rule, EPA simply refused to apply those findings when it decided to revoke the tolerances for the 11 safe high-benefit crop uses, including sugarbeets. EPA clearly has the necessary data, the ability, and the authority to preserve the tolerances for these 11 uses.

16. EPA's overbroad revocation upends decades of Agency-approved chlorpyrifos use, where EPA otherwise could lawfully and based on sound science leave in effect the tolerances for the 11 high-benefit crops—including sugarbeets. The Final Rule fails to consider the sugarbeet growers' reliance interests in applying safe and effective pesticides. Had EPA properly weighed those significant interests, it would have left the tolerances in effect for which it could have made a safety finding under the FFDCA, while revoking the tolerances where it could not.

17. By this failure, EPA improperly minimized 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.

18. EPA's scientific record, which supports maintaining 11 high-benefit crops in certain areas is highly conservative and unnecessarily protective. Yet even with these unnecessary conservatisms (including a 10x safety factor and an overly conservative water model), these 11 high-benefit uses, including sugarbeets, were found to be safe. EPA's Final Rule acknowledges these safe uses.

19. EPA justified its decision to revoke all chlorpyrifos tolerances by assuming that *all* currently registered uses are the baseline against which it must make its FFDCA safety evaluation. However, EPA is fully capable of cancelling the tolerances where it cannot make the FFDCA safety finding and leaving in place the tolerances for the 11 high-benefit safe uses, including sugarbeets.

20. Section 408(b)(2) of the FFDCA directs that EPA may "leave in effect a tolerance . . . if the Administrator determines that the tolerance is safe." And "[t]he Administrator shall modify or revoke a tolerance if the Administrator determines it is not safe." In making this finding, EPA must consider the "result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information."

21. The Final Rule's conclusion that EPA cannot make the required safety finding is premised on a faulty baseline of *all* chlorpyrifos tolerances and *all* chlorpyrifos registrations remaining in place. To fail to leave in effect the 11 tolerances for which the PID's science-based conclusions have already supported a safety finding runs afoul of the express direction in Section 408(b)(2).

22. EPA's approach sets a very negative precedent that the Agency could broadly revoke all tolerances, regardless of whether registrants, users, or EPA's own career scientists have demonstrated the safety of the continued food use of a pesticide under the proper set of conditions on specific crops, including sugarbeets.

23. In fact, while tolerances exist for sugarbeet roots, sugarbeet tops, dried beet pulp, and sugarbeet molasses, the record shows that no residues have been detected. As such, analyses conducted by EPA using the tolerance level as an exposure level are further conservative.

24. In addition to the financial harm, the sugarbeet industry is likely to suffer reputational harm as well. Based on EPA's Final Rule, purchasers of sugar are now asking our farmer owned cooperatives to report to them regarding any use of chlorpyrifos on products, including uses that might have occurred before the revocation rules effective date of February 28, 2022. This is despite EPA's own finding in its' scientific assessment that that chlorpyrifos can safely be used on sugarbeets.

25. EPA released the Final Rule with a press release, EPA Takes Action to Address Risk from Chlorpyrifos and Protect Children's Health (August 18, 2021) (https://www.epa.gov/newsreleases/epa-takes-action-address-risk-chlorpyrifos-and-protect-childrens-health), that stated that its decision was an "overdue step to protect public health" and "following the science." These statements are inconsistent with EPA's scientific record with respect to the 11 high-benefit crops identified as safe in the PID, including sugarbeets.

26. By revoking all tolerances, EPA also attacked the safety of prior use of chlorpyrifos in the eyes of the public. At the time it issued its Final Rule, EPA

also stated in its press release that its action was necessary to "ensure children, farmworkers, and all people are protected from the potentially dangerous consequences of this pesticide," even though its own expert scientists found that 11 high-benefit uses of chlorpyrifos, including sugarbeets, in select areas of the country were safe and not of concern. In its Final Rule, EPA did not refute or provide any evidence to contradict these safety findings.

27. ASGA objects to the discontinuation of the 11 high-benefit chlorpyrifos uses, including use on sugarbeets, and along with the U.S Beet Sugar Association (USBSA), filed objections with EPA on October 29, 2021 (Long Decl. Ex. F). In the objections, ASGA and USBSA also request an evidentiary hearing. In a separate filing, also on October 29, 2021, ASGA and USBSA also requested that EPA stay the decision revoking all chlorpyrifos tolerances, or at a minimum the tolerances for sugarbeets, until there is a final Agency resolution of all the critical issues that we raised in our objections (Long Decl. Ex. G). On February 22, 2022, EPA overruled these objections and denied the requests for a hearing and a stay. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

28. The decision to revoke tolerances of chlorpyrifos will negatively impact our members not just economically but also through causing reputational harm and creating uncertainty regarding the safety of food products in commerce.

EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on the eleven high-benefit agricultural crops, including sugarbeets.

29. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on the eleven high-benefit agricultural crops, including sugarbeets, and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on the eleven high-benefit agricultural crops, including sugarbeets, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.

Luther Markwart

EXHIBIT E

DECLARATION OF NATHANIEL HULTGREN
IN SUPPORT OF PETITIONER
SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF NATHANIEL HULTGREN IN SUPPORT OF PETITIONER SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE

I, Nathaniel Hultgren, declare and state as follows:

1. I serve as Chief Executive Officer for Hultgren Farms, a family-owned farm located in Raymond, Minnesota. I am authorized to make this declaration on behalf of Hultgren Farms, based upon my personal knowledge.

2. I submit this declaration in support of the (i) petition challenging the United States Environmental Protection Agency's ("EPA") Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule) and EPA's denial of the request for an administrative stay of the Final Rule; and (ii) petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos, which is set to take effect on February 28, 2022.

3. Unless the Final Rule is stayed, at least with respect to sugarbeets, Hultgren Farms will be prohibited from using chlorpyrifos during the 2022 growing season. As explained below, that would cause immediate, substantial and unrecoverable economic loss for Hultgren Farms.

4. Hultgren Farms is a general partnership between me, my father Duane and mother Nancy, and my brother Noah. Hultgren Farms is a fourth-generation family farm approximately 6,000 acres in size. My wife and I live on the farm with our five children. My family has been farming since 1932.

5. Hultgren Farms grows 1,200 acres of sugarbeets, as well as other crops that use chlorpyrifos for treatment, including alfalfa and soybeans.

Sugarbeets alone account for approximately 40% of Hultgren Farms' annual revenue. Approximately 50% of Hultgren Farms' annual revenue comes from crops on which we apply chlorpyrifos.

6. In addition to my role as CEO of Hultgren Farms, I serve as Chairman of the Board of Directors of the Southern Minnesota Beet Sugar Cooperative ("SMBSC"), a farmer-owned sugarbeet cooperative that processes sugarbeets for sugar production. Founded in 1974, the cooperative has over 500 members who own shares in the cooperative. These members grow approximately three million tons of sugarbeets annually, producing up to 1 billion pounds of pure white sugar. Hultgren Farms has been a member of SMBSC since 1976.

7. The members who own shares of SMBSC are paid based on quantity—meaning the pounds of sugar delivered to the cooperative. Toward the end of the sugarbeet harvest, the cooperative's board and management make a recommendation of projected gross revenues and projected expenditures. To pay the members, the income minus expenses gets divided up by pounds of sugar delivered (with some quality adjustments). Members are typically paid a percentage of their earnings at various points throughout the year as the sugar is delivered to customers and the cooperative is paid. When SMBSC performs well, members receive a higher payment. If SMBSC performs poorly, each member's payment is less. Because the SMBSC's fixed costs must be covered every year,

each member of the cooperative is dependent on the other members to deliver their allocated tonnage of high quality sugarbeets.

8. Hultgren Farms typically applies chlorpyrifos to its sugarbeet crops every year beginning in May. Chlorpyrifos is critically important to our farm in protecting sugarbeets from destruction due to insects such as Lygus bugs, aphids and cutworm. Hultgren Farms has used chlorpyrifos to protect sugarbeets for decades because it is effective, has favorable environmental characteristics, and is affordable. Use of chlorpyrifos on sugarbeets leaves no residues on the refined sugar produced by SMBSC.

9. For many sugarbeet growers, soybeans, alfalfa and wheat are part of our diversified cropping program. All these crops rely on chlorpyrifos. Without having the best tools to reduce root maggot fly population, both the risk of greater fly pressure and greater economic losses in subsequent years is much higher. Given our northern latitude, we have limited cropping options making it difficult to further diversify. The vast number of farmers who grow sugarbeets are not structured for animal or dairy production.

10. For Hultgren Farms, chlorpyrifos is the only tool that has been consistently effective in controlling destructive pests. Although other insecticides are commercially available, all are significantly more expensive than chlorpyrifos and none are as effective on my farm in controlling pests that attack and consume

sugarbeet crops. In addition, other insecticides often require multiple applications, increasing costs and potential environmental impacts. Without chlorpyrifos, sugarbeet growing costs at Hultgren Farms will increase significantly and sugarbeet crop yields will decrease significantly.

11. Every acre of sugarbeets is overseen by an agricultural staff from the sugarbeet cooperative and supported by a robust extension service in areas where the crop is grown. We have been practicing integrated pest management for decades and chlorpyrifos is an essential tool in that program. Alternative products are simply inferior and more expensive.

12. On August 30, 2021, EPA issued its Final Rule revoking all tolerances for chlorpyrifos use on sugarbeets and ten other crops, despite EPA's previous finding that use of chlorpyrifos on these 11 crops was safe in certain regions of the country, including Minnesota. This decision will have a devasting impact on the productivity of crops on my farm, including but not limited to my sugarbeet crops.

13. A prohibition on using chlorpyrifos impacts sugarbeets during the growing process and beyond—even after harvest. Harvested sugarbeets from different farms in the cooperative are combined and stored together in large outdoor piles for several months. During such storage, sugarbeets that have been damaged by destructive pests will deteriorate in the piles, releasing heat through respiration at an elevated rate. This respiration process impacts other sugarbeets in

the piles that were otherwise healthy and mature, and causes them to also respirate at elevated rates. Through this process, the increase in damaged sugarbeets in the storage piles reduces the amount of sugar that can be extracted for sale and results in lower revenues for both the cooperative and all its members. Thus, even if my sugarbeets are healthy, impacts from damaged sugarbeets during storage can directly affect my farm's distribution from SMBSC's sales. With the use of chlorpyrifos banned by the Final Rule, elevated respiration and heat release within SMBSC's sugarbeet piles during storage is likely to increase, resulting in even more lost profits to cooperative members.

14. For Hultgren Farms, a prohibition on using chlorpyrifos will likely lead to greater harm with every passing year, as the population of destructive pests grows and affects more and more crops each growing season. This is why an immediate stay of the Final Rule is needed—pest infestation will be worse on my farm in 2023 if chlorpyrifos cannot be used during the spring of 2022.

15. For all these reasons, Hultgren Farms will suffer immediate, concrete, and irreparable harm if the revocation of tolerances for the use of chlorpyrifos on sugarbeets goes into effect on February 28, 2022. As explained above, Hultgren Farms needs chlorpyrifos to treat its sugarbeets beginning in May of this year and there are no effective alternatives.

16. With a prohibition on the use of chlorpyrifos, profits for Hultgren Farms will be significantly impacted. Based on my experience and knowledge of the effectiveness of chlorpyrifos on my farm, compared to other treatments, I conservatively estimate that the prohibition on using chlorpyrifos will cause Hultgren Farms unrecoverable losses of approximately $60,000 per year for our sugarbeet crop alone. This is based upon a projected loss of two tons per acre on 600 acres with an average value of $50/ton. Such losses are highly significant for Hultgren Farms, which is already struggling to remain economically viable. A $60,000 loss is the equivalent of one full-time employee at Hultgren Farms that must be eliminated.

17. These immediate, irreparable and devastating economic impacts on our family farm will be exacerbated by inflation, which has increased the cost of operating a farming business (*e.g.,* fuel costs, chemical costs, and equipment costs) by over 30%. As a farmer, I cannot demand that suppliers sell me products and services at the prices Hultgren Farms needs to make a profit or break even. EPA's refusal to modify tolerances for chlorpyrifos in accordance with its safety findings could not have come at a worse time for Hultgren Farms.

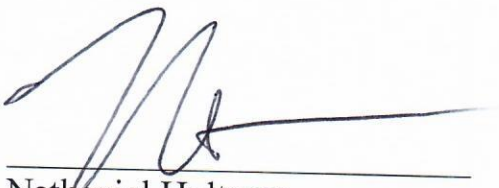
18. I expressed many of these concerns over EPA's decision to revoke all tolerances for chlorpyrifos in an October 2021 objection letter to EPA (Long Decl. Ex. I). Those concerns are even more true today, as inflation and prices continue

to soar and plague the farming industry. As I explained in that letter, instead of inflicting irreparable harm on farmers, EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on sugarbeets. EPA overruled my objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

19. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on sugarbeets and success on the merits of the petition would fully redress the harms above by allowing our family farm to continue to use chlorpyrifos on sugarbeets and other crops, consistent with the uses already deemed safe by EPA.

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

Dated this 24 day of February, 2022.



Nathaniel Hultgren

EXHIBIT F

DECLARATION OF TODD GESELIUS ON BEHALF OF PETITIONER SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF TODD GESELIUS ON BEHALF OF PETITIONER SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE

I, Todd Geselius, declare and state as follows:

1. I am the Vice President of Agriculture for the Southern Minnesota Beet Sugar Cooperative ("SMBSC") and am authorized to make this declaration on behalf of SMBSC, based upon my personal knowledge.

2. As Vice President of Agriculture, I am responsible for managing the agricultural department for SMBSC, including the agricultural research and maintenance groups. In that capacity, I am intimately familiar with SMBSC's operations, its members and the significant adverse impact EPA's decision to revoke tolerances for chlorpyrifos for use on sugarbeets will have on those members.

3. I submit this declaration in support of the (i) petition challenging the United States Environmental Protection Agency's ("EPA") Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule) and EPA's denial of the request for an administrative stay of the Final Rule; and (ii) petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos, which is set to take effect on February 28, 2022.

4. Unless the Final Rule is stayed, at least with respect to sugarbeets, SMBSC's members will be prohibited from using chlorpyrifos during the 2022 growing season. As explained below, that will cause immediate, substantial and unrecoverable economic loss for SMBSC and its members.

5. SMBSC is located in Renville, Minnesota and is a farmer-owned sugarbeet cooperative that processes sugarbeets into sugar for sale. Founded in 1974, the cooperative has over 500 members who grow approximately three million tons of sugarbeets annually. SMBSC processes these three million tons of sugarbeets to produce up to 1 billion pounds of pure white sugar every year. Fully 100% of SMBSC's revenues are generated from the processing of sugarbeets.

6. Many of SMBSC's members are multi-generation farmers, carrying on a long family tradition of growing sugarbeets. For many decades, SMBSC's farmers and their employees have depended on the sugarbeet harvest as an important source of meaningful work and needed income.

7. In a 2012 study, North Dakota State University estimated a total economic impact of $4.9 billion from sugarbeets in Minnesota and North Dakota, including significant impacts on construction, transportation, communication, public utilities, retail trade, finance, insurance, real estate, business and personal services, professional and social services, personal income and government. Bangsund, Dean A. & Hodur, Nancy M. & Leistritz, F. Larry, 2012, *Economic Contribution of the Sugarbeet Industry in Minnesota and North Dakota*, AGRIBUSINESS & APPLIED ECONOMICS REPORT, North Dakota State University, Department of Agribusiness and Applied Economics (Long Decl. Ex. J). In a 2019 study, the University of Minnesota estimated a total economic impact from

SMBSC of $708.5 million, including $197.5 million of income to regional residents and $19.9 million in taxes to local and state governments. Tuck, Brigid, 2019, *Economic Contribution of Southern Minnesota Beet Sugar Cooperative*, University of Minnesota, Extension Center for Community Vitality (Long Decl. Ex. K). According to that same study, SMBSC supported 5,240 jobs in Minnesota. *Id*. Because sugarbeet farms and most sugarbeet processing plants are located in rural areas, the vast majority of these economic impacts are felt by local communities in those areas.

8. SMBSC has made significant investments over many years to improve the way our members grow sugarbeets and make responsible use of natural resources. For example, SMBSC conducts and/or funds industry-leading agronomy research to reduce fertilizer and pesticide use and undertake regular upgrades that make sugarbeet production and processing more energy efficient.

9. SMBSC employs a team of six full-time employees to conduct research focused on improving the efficiency and sustainability of our farmers' practices in growing and harvesting sugarbeets. This team studies sugarbeet seed varieties, sugarbeet weed and disease management, sugarbeet fertility management, sugarbeet harvest, and sugarbeet storage techniques. This work helps ensure SMBSC farmers have access to the latest and most comprehensive

sugarbeet research, including research related to the most effective insecticides to treat sugarbeets and when to apply them.

10. SMBSC also engages in lobbying and other advocacy to promote sugarbeet production and to protect the interests of SMBSC and its members. The interests that SMBSC 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 SMBSC.

11. Every spring, SMBSC members plant approximately 120,000 acres of sugarbeets in 17 counties in west-central and southern Minnesota. Chlorpyrifos is typically applied by SMBSC members every year beginning in May to sugarbeets and other crops. Chlorpyrifos is critically important for protecting sugarbeets from destruction due to insects. SMBSC members have used chlorpyrifos to protect sugarbeets for decades because it is effective, has favorable environmental characteristics, and is affordable.

12. For SMBSC members, chlorpyrifos is the only tool that is consistently effective in controlling destructive pests that would otherwise feed on the sugarbeet crops. Although other insecticides are commercially available, all are significantly more expensive than chlorpyrifos and none are as effective in controlling pests that attack and consume sugarbeet crops. Without chlorpyrifos,

sugarbeet growing costs will increase significantly and sugarbeet crop yields will decrease significantly.

13. About 50,000 sugarbeet seeds are planted on every acre at SMBSC member farms. One small bucket of sugarbeet seeds produces roughly 30 tons of sugarbeets for harvesting in the fall, which fills about one semi-truck.

14. Once a semi-truck is loaded in the field with sugarbeets, it travels to one of SMBSC's twelve receiving stations. At the receiving stations, trucks are directed to a sugarbeet piler for unloading.

15. SMBSC places the sugarbeets received from its members into large outdoor storage piles approximately 200 feet wide and 20-30 feet tall. In compiling these sugarbeet piles, SMBSC commingles the sugarbeets from multiple farms. To ensure that the sugarbeets retain their sugar content, SMBSC piles them in a specific manner to minimize sugar loss. SMBSC stores the sugarbeets in these piles over the winter until they are processed the following spring.

16. During the winter and into the spring, SMBSC reloads the sugarbeets from these piles and hauls them by truck to SMBSC's factory in Renville for processing into sugar. These trucks empty sugarbeets into the unloading station at the factory to begin the sugar extraction process. Once that process is complete, the sugar is packaged in bags or stored in bulk for distribution.

17. SMBSC's members who own shares are paid based on quantity—meaning the pounds of sugar extracted from the sugarbeets delivered to the cooperative. Toward the end of the sugarbeet harvest (usually in November), SMBSC's board and management make a recommendation of projected gross revenues and projected expenditures. To pay the members, the income minus expenses gets divided up by pounds of sugar delivered to the cooperative (with some quality adjustments). SMBSC typically makes distributions to its members at various points throughout the year, based upon a percentage of their earnings, as the sugar is delivered to the customers and the cooperative is paid. When SMBSC performs well, each member's payment is higher. If SMBSC performs poorly, each member's payment is less. Because the cooperative's fixed costs must be covered every year, each member is dependent on the other members to deliver their allocated tonnage of high quality sugarbeets.

18. On August 30, 2021, EPA issued a Final Rule revoking all tolerances for chlorpyrifos use on sugarbeets and ten other crops, despite EPA's previous finding that such use was safe in certain regions of the country, including Minnesota. EPA's decision will have a devasting impact on the productivity of crops on SMBSC members' farms. SMBSC's members annually raise 120,000 acres of sugarbeets and chlorpyrifos is used on nearly half those acres to combat pests. SMBSC members' annual yield per acre is significantly greater using

chlorpyrifos than using other insecticides. EPA's revocation of chlorpyrifos tolerances for sugarbeets will cause a significant decrease in mature and healthy sugarbeets produced by SMBSC members, which will result in significant losses of profit for SMBSC and its members.

19. For SMBSC members, a prohibition on using chlorpyrifos will lead to greater harm with every passing year, as the population of destructive pests grows and affects more and more crops each growing season. This is why an immediate stay of the Final Rule is needed—pest infestation will be worse in 2023 if chlorpyrifos cannot be used in the spring of 2022.

20. EPA's decision will also have a significant impact on the efficiency of SMBCS's operations. SMBSC has 119,302 shares, with each share representing one acre of sugarbeets. Because SMBSC's processing facilities cannot process all sugarbeets from those acres, each member is bound to a planting allocation. Each member has the right and obligation to plant a percentage of the acreage for which they own shares. If members are prohibited from using chlorpyrifos to control pests, SMBSC's board and management will need to decide if they should raise the allocation to ensure the cooperative gets the total tons of sugarbeets it needs in a given year. If SMBSC raises the planting allocation too high, it risks having too many sugarbeets (resulting in increased disposal costs). If infestation is worse in a given year than predicted, SMBSC would not have enough sugarbeets (resulting in

failing to meet customer demand). For these reasons, the inability for SMBSC members to use chlorpyrifos creates even more uncertainty into SMBSC's operations and will increase our costs of doing business.

21. For all these reasons, SMBSC and its members will suffer immediate, concrete and irreparable harm if the revocation of tolerances for the use of chlorpyrifos on sugarbeets goes into effect on February 28, 2022. As explained above, SMBSC's members rely on chlorpyrifos to treat their sugarbeets beginning in May of each year and there are no effective alternatives.

22. With a prohibition on the use of chlorpyrifos, profits for SMBSC's members from sugarbeets will be significantly impacted. In 2020, EPA evaluated the benefits of chlorpyrifos on sugarbeets and estimated benefits of "almost $500 per acre in parts of Minnesota and North Dakota," which is consistent with research conducted by nationally-recognized expert Dr. Mark Boetel from North Dakota State University. EPA, Chlorpyrifos, Proposed Interim Registration Review Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf). Using EPA's numbers, I estimate unrecoverable losses of up to $30,000,000 per year for SMBSC's members. This is based upon multiplying EPA's $500/acre figure to the estimated average number of sugarbeet acres treated with chlorpyrifos by SMBSC's

members every year. Such losses would be highly significant for SMBSC's members, who are already struggling to remain economically viable.

23. These immediate, irreparable and devastating economic impacts on SMBSC's members and SMBSC will be exacerbated by inflation, which has increased the cost of operating a farming business (*e.g.,* fuel costs, chemical costs, and equipment costs) by over 30%. As farmers, SMBSC's members cannot demand that suppliers sell them products and services at the prices they need to make a profit or break even. EPA's refusal to modify tolerances for chlorpyrifos in accordance with its previous safety findings could not have come at a worse time for SMBSC and its members.

24. SMBSC expressed many of these grave concerns over EPA's decision to revoke all tolerances for chlorpyrifos in an objection letter I sent to EPA on October 29, 2021 (Long Decl. Ex. L). The concerns expressed in that letter are even more true today, as inflation and prices continue to soar and plague the farming industry. As I explained in that letter, instead of inflicting irreparable harm on SMBSC and its members, EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on sugarbeets. EPA overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

25. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on sugarbeets and success on the merits of the petition would fully redress the harms above by allowing continued use chlorpyrifos on sugarbeets, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.

Todd Geselius

EXHIBIT G

DECLARATION OF JOE HASTINGS IN SUPPORT OF PETITIONER AMERICAN CRYSTAL SUGAR COMPANY

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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-OAK 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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAELS, REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF JOE HASTINGS IN SUPPORT OF PETITIONER AMERICAN CRYSTAL SUGAR COMPANY

I, Joe Hastings, declare and state as follows:

1. I am the General Agronomist for American Crystal Sugar Company ("ACSC") and am authorized to make this declaration on behalf of ACSC, based upon my personal knowledge.

2. I grew up on my family's farm and have been involved in sugarbeet farming since I was 12 years old, encompassing 36 years. I received a Bachelor of Science in Crop & Weed Sciences from North Dakota State University. I have worked at ACSC since 2003 in the roles of Agriculturist, Ag Strategy Development Manager, Agronomy Manager, and since 2019 as its General Agronomist. As a General Agronomist for ACSC, I am responsible for providing agronomic sugarbeet information and tools to agricultural staff, as well as ACSC's member growers. In that capacity, I am intimately familiar with ACSC's operations, its members and the significant adverse impact EPA's decision to revoke tolerances for chlorpyrifos will have on those members.

3. I submit this declaration in support of the (i) petition challenging the United States Environmental Protection Agency's ("EPA") Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule) and EPA's denial of the request for an administrative safety of the Final Rule; and (ii) petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos, which is set to take effect on February 28, 2022.

4. Unless the Final Rule is stayed, at least with respect to sugarbeets, members of ACSC will be prohibited from using chlorpyrifos during the 2022 growing season. As explained below, that will cause immediate, substantial and unrecoverable economic loss to the members of ACSC.

5. ACSC is located in Moorhead, Minnesota and is a farmer-owned sugarbeet cooperative that processes sugarbeets for sugar production. Founded in 1973, the cooperative has over 2,600 members who own shares and grow approximately 410,000 sugarbeet acres producing approximately 11 million tons of sugarbeets annually, extracting up to 3.4 billion pounds of pure white sugar from those sugarbeets. ACSC owns and operates factories in Crookston, Minnesota; East Grand Forks, Minnesota; Moorhead, Minnesota; Drayton, North Dakota, and Hillsboro, North Dakota. The vast majority of ACSC's revenues are generated from the processing of sugarbeets.

6. Many of ACSC's members are multi-generation farmers, carrying on a long family tradition of growing sugarbeets. For many decades, these farmers and their employees have depended on the sugarbeet harvest as an important source of meaningful work and needed income. ACSC employs about 1,400 full- time employees and contracts for roughly 1,500 hourly seasonal workers at the time of harvest to pile the sugarbeet crop for storage. In a 2012 study, North Dakota State University estimated a total economic impact of $4.9 billion from sugarbeets in

Minnesota and North Dakota, including significant impacts on construction, transportation, communication, public utilities, retail trade, finance, insurance, real estate, business and personal services, professional and social services, personal income and government. Bangsund, Dean A. & Hodur, Nancy M. & Leistritz, F. Larry, 2012, *Economic Contribution of the Sugarbeet Industry in Minnesota and North Dakota*, AGRIBUSINESS & APPLIED ECONOMICS REPORT, North Dakota State University, Department of Agribusiness and Applied Economics (Long Decl. Ex. E). Because sugarbeet farms and most sugarbeet processing plants are located in rural areas, the vast majority of these economic impacts are felt by local communities in those areas.

7. ACSC has made significant investments over many years to improve the way our members grow sugarbeets and make responsible use of natural resources. ACSC works with and funds sugarbeet agronomy research at local universities and the USDA to develop sugarbeet best management practices for insecticide use in sugarbeet production and the improvement in other agronomic practices. ACSC undertakes regular upgrades that make sugarbeet production and processing more energy efficient. ACSC also maintains best management practices for its grower members that cover virtually every aspect of sugarbeet farming, including harvest, fertility, variety selection, stand establishment, weed control, disease control, and insect control. As part of maintaining these best practices,

ACSC provides its members with information related to the most effective insecticides to treat sugarbeets and when and where to apply them, as well as when not to.

8. ACSC also engages in lobbying and other advocacy to promote sugarbeet production and to protect the interests of ACSC and its members. The interests that ACSC 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 ACSC.

9. Every spring, ACSC members plant approximately 410,000 acres of sugarbeets in Minnesota and North Dakota. Chlorpyrifos is critically important for protecting sugarbeets from destruction due to insects, including 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. Research from North Dakota State University and observations from ACSC Ag Staff has shown that in 2021, 37% (150,944) of the acres grown by ACSC members are under severe or moderate pressure from the sugarbeet root maggot. 54% of ACSC member farms have acres in this region. In recent years this affected acreage has been increasing at an average rate of about 11,000 acres/year. Without the use of chlorpyrifos, the rate of affected

acre growth will likely increase as it is the most effective post emergence insecticide for controlling the sugarbeet root maggot. Chlorpyrifos is an essential pesticide in these areas.

10. Chlorpyrifos is used only when necessary. ACSC has a team of trained agricultural staff that also work with university sugarbeet entomologists to create insecticide application programs and modify those programs as conditions change. Information to inform the appropriate application of chlorpyrifos is collected by scouting personnel to determine if and where the sugarbeet root maggot fly population is high enough to justify an application. For example, stakes are used to capture flies and monitor population levels. If the stakes show population above the threshold for harm, chlorpyrifos is applied. Maps are updated each year to track areas where sugarbeet root maggot flies are at moderate and severe levels of concern. In addition, a university developed sugarbeet root maggot degree day model is used to help in determining when the sugarbeet root maggot flies will start to appear and hit their peak. This helps in knowing when to start the scouting fields in the areas identified on the map.

11. For ACSC members, chlorpyrifos is the only tool that is 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.

12. Research conducted by Dr. Boetel, Sugarbeet Entomologist NDSU, in 2020 & 2021 for sugarbeet root maggot control showed that using the next-best available alternative in place of chlorpyrifos resulted in a loss of $200/acre and 5.6 tons/acre. Without chlorpyrifos, sugarbeet growing costs will increase significantly and sugarbeet crop yields will decrease significantly.

13. Once harvested in late September/October, ACSC members deliver their sugarbeets to one of ACSC's five factories or 31 outside piling site locations, where the sugarbeets are placed into large outdoor storage piles. In compiling these sugarbeet piles, ACSC commingles the sugarbeets from multiple farms. To ensure that the sugarbeets retain their sugar content, ACSC piles them in a specific manner to minimize sugar loss. ACSC stores the sugarbeets in these piles and processes them from the fall through the next spring, with a typical storage and process campaign length of approximately 270 days.

14. During the storage and processing campaign, ACSC reloads the sugarbeets from these piles and delivers them to the factory for processing into sugar. Once that process is complete, the sugar is packaged in bags or stored in bulk for distribution. Use of chlorpyrifos on sugarbeets leaves no residues on the refined sugar produced by ACSC.

15. ACSC's members receive a beet payment based on quantity of sugarbeets delivered to ACSC for processing, taking into account the pounds of sugar and co-products to be extracted from the sugarbeets. Following the sugarbeet harvest, ACSC estimates the "beet payment" by projecting the gross revenues and expenditures attributable to the crop. Members are paid a percentage of their beet payment in three installments throughout the year. When ACSC performs well, members receive a higher beet payment. If ACSC performs poorly, each member's beet payment is less. Because ACSC's fixed costs must be covered every year, each member of the cooperative is dependent on the other members to deliver their proportionate share of sugarbeets.

16. On August 30, 2021, EPA issued a Final Rule revoking all tolerances for chlorpyrifos use on sugarbeets and ten other crops, despite EPA's previous finding that such use was safe in certain regions of the country, including Minnesota and North Dakota. EPA's decision will have a devasting impact on the productivity of crops on ACSC members' farms. ACSC members annually raise approximately 410,000 acres of sugarbeets and chlorpyrifos is used on roughly 150,000 of those acres to combat pests. ACSC members' annual yield per acre is significantly greater using chlorpyrifos than using other insecticides. EPA's revocation of chlorpyrifos tolerances for sugarbeets will cause a significant decrease in mature and healthy

sugarbeets produced by ACSC members, which will result in significant lost profit for the members of ACSC.

17. For ACSC members, a prohibition on using chlorpyrifos will likely lead to greater harm with every passing year, as the population of destructive pests grows and affects more and more crops each growing season. This is why an immediate stay of the Final Rule is needed-pest infestation will be worse in 2023 if chlorpyrifos cannot be used in the spring of 2022.

18. EPA's decision will also have a significant impact on the efficiency of ACSC's operations. ACSC has 498,570 outstanding shares of preferred stock that are owned by ACSC members and provide them with the right (and obligation) to deliver sugarbeets to ACSC for processing. In 2022 each share represents the right and obligation to plant between 0.78 and 0.83 acre of sugarbeets. ACSC sets this planting tolerance for its shareholders based on estimated crop production potential and the processing capacity of its factories. Each member has the right and obligation to plant sugarbeets within the established planting tolerance. If members are prohibited from using chlorpyrifos to control pests, ACSC will need to adjust the planting tolerance to ensure the cooperative gets the total tons of sugarbeets it needs in a given year to maximize efficiency and meet customer needs. Having to raise the same amount of sugar across more acres is a loss in production and economic efficiencies. If root maggot infestation is worse in a given year than predicted,

ACSC may not have enough sugarbeets, resulting in failing to meet customer demand and diminished profitability for the members of ACSC. For these reasons, the inability for ACSC members to use chlorpyrifos creates even more uncertainty in ACSC's operations and will increase costs and risks of doing business.

19. For all these reasons, the members of ACSC will suffer immediate, concrete and irreparable harm if the revocation of tolerances for the use of chlorpyrifos on sugarbeets goes into effect on February 28, 2022. As explained above, ACSC's members rely on the ability to have chlorpyrifos to protect their sugarbeet crop as the alternatives to chlorpyrifos are not as effective.

20. With a prohibition on the use of chlorpyrifos, profits for ACSC's members will be significantly impacted. In 2020, EPA evaluated the benefits of chlorpyrifos on sugarbeets and estimated benefits of "almost $500 per acre in parts of Minnesota and North Dakota," which is consistent with research conducted by nationally-recognized expert Dr. Mark Boetel from North Dakota State University for areas where there is high pest pressure. EPA, Chlorpyrifos, Proposed Interim Registration Review Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifospid_signed_120320.pdf). Using EPA's numbers and assuming no other mitigating actions are taken by ACSC members, it is estimated that unrecoverable losses of up to approximately $30 million a year could occur for ACSC's members. This is based

upon multiplying EPA's $500/acre value if sugarbeet root maggot is not adequately controlled by insecticides to the number of acres in 2021 that were under severe pressure from the sugarbeet root maggot (61,769 sugarbeet acres). I consider this estimate to be conservative because it only applies to acres under severe pressure (and not those acres under moderate pressure, which are an additional 87,992 sugarbeet acres) and such severe pressure would likely expand to more acres every year if members are prohibited from using chlorpyrifos. Such losses would be highly significant for ACSC's members causing an additional economic and production challenge on their farms. Furthermore, this estimate doesn't account for the cost that would be incurred by ACSC members to plant additional sugarbeet acres to replace the sugar lost to root maggot affected acres.

21. I conservatively estimate that there will be aggregate unrecoverable losses of approximately $34,436,634 in 2022 for ACSC's grower members if those growers are not permitted to use chlorpyrifos. This estimate is based upon the acres expected to be affected by sugarbeet root maggot (SBRM) in 2022 for ACSC's members and applying Dr. Boetel's most recent research using the next best alternative in place of chlorpyrifos. The severely affected SBRM acres in 2022 are estimated to be 68,696 acres. In Dr. Boetel's research for control in a severe SBRM area and replacing chlorpyrifos with the next best alternative, there would be a reduction of 1,565 lbs. of sugar/acre produced equating to $200/acre loss. The 1,565

lbs. of sugar/acre lost applied to the 68,696 acres results in 107,509,240 lbs. of sugar lost in severe SBRM affected areas. Taking the $200/acre lost multiplied by 68,696 acres equates to $13,739,200 in losses in severe SBRM areas. Moderately affected SBRM acres in 2022 are estimated to be 92,336 acres. In Dr. Boetel's research for control in a moderate SBRM area and replacing chlorpyrifos with the next best alternative, there would be a reduction of 397 lbs. of sugar/acre produced equating to $43/acre loss. The 397 lbs. of sugar/acre lost applied to the 92,336 acres results in 36,657,392 lbs. of sugar lost in moderate SBRM affected areas. Taking $43/acre multiplied by 92,336 acres equates to $3,970,488 in losses in moderate SBRM areas. Together these figures add up to 144,166,632 lbs. of sugar production lost resulting in a total of $17,709,648 lost in areas affected by SBRM.

22. In order to make up for the lost sugar production associated with those affected acres, it would also require that an additional 14,679 acres of sugarbeets be produced. This is based on ACSC's 5-year average of recoverable sugar produced/acre (9,821 lbs. of sugar/acre). Dividing the 144,166,632 of lost sugar by 9,821 lbs. of sugar/acre results in 14,679 acres. The cost of production/acre is estimated at $1,134/acre based on the most recent (2020) Crop Enterprise Analysis done by Minnesota and North Dakota Farm Business Management Education program. One can assume that with recent inflation for the 2022 crop year production costs that this has increased. Applying $1,134/acre in production costs

to the additional 14,679 acres results in $16,645,986 of additional production costs to replace the sugar that would be lost. Combining the previously stated $17,709,648 of total lost revenue to $16,645,986 in additional total production costs, results in the total loss of $34,436,634 caused by not having chlorpyrifos as an option for sugarbeet root maggot control in sugarbeets. This is a one year loss (2022) and will be replicated (and likely increase) in each subsequent crop year.

23. In addition to the grower losses described above, there is reason to think ACSC 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.

24. Chlorpyrifos is also used by the West Coast Beet Seed Company ("WCBSC") (partly owned by ACSC) in sugarbeet seed production to control symphylans, a subterranean pest that affects proper primary root and secondary root development, which in turn negatively affects yield and sugarbeet seed production. Chlorpyrifos is the most effective and most economical registered option for symphylan control when wet field conditions do not allow for mechanical incorporation and is critical to WCBSC's production of high-quality sugarbeet seeds, which are sold exclusively to ACSC members. If chlorpyrifos is not available,

25-33% of the sugarbeet seed production acreage will likely be affected with up to a 50% loss of seed production. Without adequate control, symphylan populations increase and spread to additional acres, compounding the amount of production lost. These production losses lead to higher production costs for ASCS and higher seed prices for ASCS members, resulting in further harm to ASCS and its members.

25. These immediate, irreparable and devastating economic impacts from the loss of chlorpyrifos will be exacerbated by inflationary pressures that have significantly increased the cost of operating a farming business (*e.g.*, fertilizer costs, fuel costs, chemical costs, and equipment costs). EPA's refusal to modify tolerances for chlorpyrifos in accordance with its previous safety findings could not have come at a worse time for ACSC members.

26. ACSC expressed many of its grave concerns over EPA's decision to revoke all tolerances for chlorpyrifos in an objection letter I sent to EPA on October 29, 2021 (Long Decl. Ex. H). The concerns expressed in that letter are even more true today, as inflation and prices continue to soar and plague the farming industry. As I explained in that letter, instead of inflicting irreparable harm on ACSC's members, EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on sugarbeets. EPA overruled these objections

on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

27. In its decision overruling our objections and prohibiting the use of chlorpyrifos for uses it deemed safe, EPA admits that 20% of Minnesota sugarbeet acreage and 10% of North Dakota acreage could be lost. Acreage losses of that magnitude would threaten the very existence of ACSC. ACSC cannot source sugarbeets in "other areas" outside the Red River Valley because sugarbeets cannot be economically shipped hundreds or thousands of miles, nor can "other areas" grow those acres to make up for those losses because every other sugarbeet factory is at maximum capacity. If EPA's test for irreparable harm is putting an entity out of business, it has admitted in its denial of our objections that EPA is doing just that.

28. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on sugarbeets and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on sugarbeets, consistent with the uses already deemed safe by EPA.

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

Dated this 26th day of February, 2022.

Joe Hastings

EXHIBIT H

DECLARATION OF BRYANT HAUGRUD ON BEHALF OF PETITIONER MINN-DAK FARMERS COOPERATIVE

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF BRYANT HAUGRUD ON BEHALF OF PETITIONER MINN-DAK FARMERS COOPERATIVE

I, Bryant Haugrud, declare and state as follows:

1. I serve as Chief Executive Officer for Haugrud Farms, Inc. ("Haugrud Farms"), a family-owned farm located in Rothsay, Minnesota. I am authorized to make this declaration on behalf of Haugrud Farms, based upon my personal knowledge.

2. I submit this declaration in support of the (i) petition challenging the United States Environmental Protection Agency's ("EPA") Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule) and EPA's denial of the request for an administrative stay of the Final Rule; and (ii) petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos, which is set to take effect on February 28, 2022.

3. Unless the Final Rule is stayed, at least with respect to sugarbeets, Haugrud Farms will be prohibited from using chlorpyrifos during the 2022 growing season. As explained below, that would cause immediate, substantial and unrecoverable economic loss for Haugrud Farms.

4. Haugrud Farms is owned and operated by me and my brother, Brent. Haugrud Farms is a fourth-generation family farm approximately 4,000 acres in size. Brent and I are the third generation of our family farming this land, following our parents and grandparents. My daughter and her husband, my youngest son,

and Brent's oldest son (my nephew), work with us on the farm and plan to continue Haugrud Farms' operation after Brent and I are no longer farming.

5. Haugrud Farms grows 900 acres of sugarbeets, and we rely on chlorpyrifos to treat those acres. We count on our 900 acres of sugarbeets—which constitute 22.5% of our acreage—to produce approximately 50% of Haugrud Farms' annual revenue. We also grow approximately 1,550 acres of soybeans, on which we also apply chlorpyrifos approximately every other year, as needed.

6. I, my brother, my son-in-law, and my nephews are members and own shares, separately, in Minn-Dak Farmers Cooperative ("Minn-Dak"), a farmer-owned sugarbeet cooperative that processes sugarbeets for sugar production. Formed in 1972, the cooperative has approximately 500 individual members who all own shares in the cooperative. These members collectively grow 105,000 acres of sugarbeets annually. Together, my brother and I each own approximately 240 shares, which we lease back to Haugrud Farms. All 900 sugarbeet acres that we grow on our farm are part of the cooperative's acreage.

7. The members who own shares and raise sugarbeets for Minn-Dak are paid based on both the quantity (tonnage) and quality (a combination of sugar and purity) of their crop which is simply factored down to the total pounds of sugar delivered to the cooperative. Toward the end of the sugarbeet harvest in October, the cooperative's board and management make a recommendation of projected

gross revenues and projected expenditures. To pay the members, the income minus expenses gets divided up by pounds of sugar delivered by the membership. Members are typically paid a percentage of their earnings at various points throughout the year as the sugar is delivered to customers and the cooperative is paid. When the membership delivers a favorable crop, members receive a higher payment. If the crop is below-average, each member's payment is less. Because Minn-Dak's fixed costs must be covered every year, each member of the cooperative is dependent on the other members to deliver their allocated acres of good tonnage and high quality sugarbeets.

8. Haugrud Farms typically applies chlorpyrifos to its sugarbeet crops every year in granular form in the soil during the start of planting process, which is typically mid-April to early May. Chlorpyrifos is critically important to our farm in protecting sugarbeets from destruction due to insects such as the sugarbeet root maggot and cutworm. Haugrud Farms has used chlorpyrifos to protect sugarbeets since 1996 because it is effective, has favorable environmental characteristics, and is affordable. Use of chlorpyrifos on sugarbeets leaves no residues on the refined sugar produced by Minn-Dak.

9. Since we began growing sugarbeets in 1996, chlorpyrifos is the only insecticide Haugrud Farms has used to control destructive pests on our sugarbeet crops. Although other insecticides are commercially available, all are significantly

more expensive than chlorpyrifos and none would be as effective on my farm in controlling pests that attack and consume sugarbeet crops. In particular, other insecticides do not adequately address, prior to planting or at planting, the cutworm infestation that threatens our sugarbeet crops. If cutworm is not effectively treated at planting (like we do with granular chlorpyrifos), it is much more costly to treat later, and requires spraying additional insecticides. In addition, other insecticides often require multiple applications, increasing costs and potential environmental impacts. Without chlorpyrifos, sugarbeet growing costs at Haugrud Farms will increase significantly and sugarbeet crop yields will decrease significantly. If we are prohibited from using chlorpyrifos in the 2022 growing season, our only plan is to hope that there is not a significant pest problem this growing season. Hope is high risk and is neither a strategy nor a long-term solution. I know that farmers who do not use insecticides typically have a significant pest pressure problem at least every few years. The pests that threaten Haugrud Farms' sugarbeet crops are not eradicated—they are merely controlled.

10. On August 30, 2021, EPA issued its Final Rule revoking all tolerances for chlorpyrifos use on sugarbeets and ten other crops, despite EPA's previous finding that use of chlorpyrifos on these 11 crops was safe in certain regions of the country, including Minnesota. This decision will have a devasting impact on the productivity of crops on my farm, including but not limited to my sugarbeet crops.

11. A prohibition on using chlorpyrifos impacts sugarbeets during the growing process and beyond—even after harvest. Harvested sugarbeets from different farms in the cooperative are combined and stored together in large outdoor piles for several months. During such storage, sugarbeets that have been damaged by destructive pests will deteriorate in the piles, releasing heat through respiration at an elevated rate. This respiration process impacts other sugarbeets in the piles that were otherwise healthy and mature, and causes them to also respirate at elevated rates. Through this process, the increase in damaged sugarbeets in the storage piles reduces the amount of sugar that can be extracted for sale and results in lower revenues for both the cooperative and all its members. Thus, even if my sugarbeets are healthy, impacts from damaged sugarbeets during storage can directly affect my farm's distribution from Minn-Dak's sales. With the use of chlorpyrifos banned by the Final Rule, elevated respiration and heat release within Minn-Dak's sugarbeet piles during storage is likely to increase, resulting in even more lost profits to cooperative members.

12. For Haugrud Farms, a prohibition on using chlorpyrifos will likely lead to greater harm with every passing year, as the population of destructive pests grows and affects more and more crops each growing season. This is why an immediate stay of the Final Rule is needed—pest infestation will be worse on my farm in 2023 if chlorpyrifos cannot be used during the spring of 2022.

13. For many sugarbeet growers, soybeans, corn and wheat are part of our diversified cropping program. All these crops rely on chlorpyrifos. Without having the best tools to reduce root maggot fly population, both the risk of greater fly pressure and greater economic losses in subsequent years is much higher. Given our northern latitude, we have limited cropping options making it difficult to further diversify. The vast number of farmers who grow sugarbeets are not structured for animal or dairy production.

14. Every acre of our sugarbeet crop is overseen by a member of the sugarbeet cooperative's agricultural staff who is a Certified Crop Advisor. Our farming operation is also supported by a robust extension service in the areas where our crops are grown. Per the recommendations of both, we have been practicing integrated pest management for decades and chlorpyrifos is an essential tool in that program. Alternative products are simply inferior and more expensive.

15. For all these reasons, Haugrud Farms will suffer immediate, concrete, and irreparable harm if the revocation of tolerances for the use of chlorpyrifos on sugarbeets goes into effect on February 28, 2022. As explained above, Haugrud Farms needs chlorpyrifos to treat its sugarbeets beginning in late April or early May of this year and there are no effective alternatives.

16. With a prohibition on the use of chlorpyrifos, profits for Haugrud Farms will be significantly impacted. Based on my experience and knowledge of

the effectiveness of chlorpyrifos on my farm, compared to other treatments, I conservatively estimate that the prohibition on using chlorpyrifos will cause Haugrud Farms unrecoverable losses of approximately $270,000.00 per year for our sugarbeet crop alone. This is based upon North Dakota State University and University of Minnesota research. Such losses are highly significant for Haugrud Farms, which is already struggling to remain economically viable.

17. These immediate, irreparable and devastating economic impacts on our family farm will be exacerbated by inflation, which has increased the cost of operating a farming business (*e.g.*, fertilizer costs, fuel costs, chemical costs, and equipment costs) by over 30%. As a farmer, I cannot demand that suppliers sell me products and services at the prices Haugrud Farms needs to make a profit or break even. EPA's refusal to modify tolerances for chlorpyrifos in accordance with its safety findings could not have come at a worse time for Haugrud Farms.

18. Instead of inflicting irreparable harm on farmers, EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on sugarbeets.

19. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on sugarbeets and success on the merits of the petition would fully redress the harms above by allowing our family farm to continue to use

chlorpyrifos on sugarbeets and other crops, consistent with the uses already deemed safe by EPA.

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

Dated this 27th day of February, 2022.

Bryant Haugrud

EXHIBIT I

DECLARATION OF DR. MIKE METZGER ON BEHALF OF PETITIONER MINN-DAK FARMERS COOPERATIVE

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF DR. MIKE METZGER ON BEHALF OF PETITIONER MINN-DAK FARMERS COOPERATIVE

I, Mike Metzger, declare and state as follows:

1. I am a Vice President of Agriculture & Research at the Minn-Dak Farmers Cooperative ("Minn-Dak") and am authorized to make this declaration on behalf of Minn-Dak, based upon my personal knowledge.

2. As Vice President of Agriculture & Research, 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 Minn-Dak's operations, its members, and the significant adverse impact EPA's decision to revoke tolerances for chlorpyrifos will have on those members and the cooperative.

3. I submit this declaration in support of the (i) petition challenging the United States Environmental Protection Agency's ("EPA") Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule) and EPA's denial of the request for an administrative stay of the Final Rule; and (ii) petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos, which is set to take effect on February 28, 2022.

4. Unless the Final Rule is stayed, at least with respect to sugarbeets, Minn-Dak's members will be prohibited from using chlorpyrifos during the 2022

growing season. As explained below, that will cause immediate, substantial, and unrecoverable economic loss for Minn-Dak and its members.

5. Minn-Dak is located in Wahpeton, North Dakota, and is a farmer-owned sugarbeet cooperative that processes sugarbeets for sugar production and associated co-products. Founded in 1972, the cooperative has approximately 500 members who own shares and grow approximately three million tons of sugarbeets annually, producing up to 900 million pounds of pure white sugar. Minn-Dak's revenues are generated from the processing of sugarbeets into sugar and associated co-products.

6. Most all of Minn-Dak's members are multi-generation farmers, carrying on a long family tradition of growing sugarbeets. For many decades, Minn-Dak's farmers and their employees have depended on the sugarbeet harvest as an important source of meaningful work and needed income. Minn-Dak employs about 400 year-round employees, about 300 harvest employees and about 75 seasonal employees. In a 2012 study, North Dakota State University estimated an annual total economic impact of $4.9 billion from sugarbeets in Minnesota and North Dakota, including significant impacts on construction, transportation, communication, public utilities, retail trade, finance, insurance, real estate, business and personal services, professional and social services, personal income and government (Bangsund, Dean A. & Hodur, Nancy M. & Leistritz, F. Larry,

2012, *Economic Contribution of the Sugarbeet Industry in Minnesota and North Dakota*, AGRIBUSINESS & APPLIED ECONOMICS REPORT, North Dakota State University, Department of Agribusiness and Applied Economics) (Long Decl. Ex J). Because sugarbeet farms and most sugarbeet processing plants are located in rural areas, the vast majority of these economic impacts are felt by local communities within those areas.

7. Minn-Dak has made significant investments over many years to improve the way our members grow sugarbeets and make responsible use of natural resources. Minn-Dak conducts agronomy research to reduce fertilizer and pesticide use and undertakes regular upgrades that make sugarbeet production and processing more energy efficient. Minn-Dak also maintains a research and resource portal on its website, which covers virtually every aspect of sugarbeet farming, including harvest, fertility, variety selection, stand establishment, weed control, disease control, and insect control. As part of maintaining these resources, Minn-Dak provides its members with information related to the most effective insecticides to treat sugarbeets and when to apply them.

8. Minn-Dak also engages in lobbying and other advocacy to promote sugarbeet production and to protect the interests of Minn-Dak and its members. The interests that Minn-Dak 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 Minn-Dak.

9. Every spring, Minn-Dak members plant approximately 105,000 acres of sugarbeets in Minnesota and North Dakota. Chlorpyrifos is typically applied by Minn-Dak 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 entomology departments of both North Dakota State University and the University of Minnesota. Minn-Dak members have used chlorpyrifos to protect sugarbeets for decades because it is effective, has favorable environmental characteristics, and is affordable.

10. For Minn-Dak members, chlorpyrifos is the only tool that is consistently effective in controlling destructive pests that would otherwise feed on the sugarbeet crops. Although other pesticides are commercially available, all are significantly more expensive than chlorpyrifos and none are as effective in controlling pests that attack and consume sugarbeet crops. Without chlorpyrifos,

sugarbeet growing costs will increase significantly and sugarbeet crop yields will decrease significantly.

11. Once harvested in October, Minn-Dak members deliver their sugarbeets to Minn-Dak Receiving Stations, where the sugarbeets are placed into large outdoor storage piles until they are transported to the processing facility in Wahpteon. During sugarbeet harvest delivery, sugarbeets from multiple farms and multiple fields are comingled when erecting the storage piles. To ensure that the sugarbeets retain their sugar content, Minn-Dak piles the crop under strict harvesting parameters to prevent additional losses while in storage. Minn-Dak stores the sugarbeets in these piles for up to 250 days until they are transported into the factory for processing. Once this process is complete, the granulated sugar is packaged in bags or stored in bulk for distribution. Use of chlorpyrifos on sugarbeets leaves no residues on the refined sugar produced by Minn-Dak.

12. Minn-Dak's members who own shares and raise sugarbeets are paid based on both the quantity (tonnage) and quality (a combination of sugar and purity) of their crop which is simply factored down to the total pounds of sugar delivered to the cooperative. Toward the end of the sugarbeet harvest (usually in late-October), Minn-Dak's board and management make a recommendation of projected gross revenues and projected expenditures. To pay the members, the income minus expenses gets divided up by pounds of sugar delivered by the

cooperative. Minn-Dak typically makes distributions to its members at various points throughout the year, based upon a percentage of their earnings, as the sugar is delivered to customers and the cooperative is paid. When the membership delivers a favorable crop, each member's payment is higher. If the crop is below-average, each member's payment is less. Because the cooperative's fixed costs must be covered every year, each member is dependent on the other members to deliver their allocated acres of good tonnage and high quality sugarbeets.

13. On August 30, 2021, EPA issued a Final Rule revoking all tolerances for chlorpyrifos use on sugarbeets and ten other crops, despite EPA's previous finding that such use was safe in certain regions of the country, including Minnesota and North Dakota. EPA's decision will have a devasting impact on the productivity of crops on Minn-Dak members' farms. Minn-Dak members annually raise approximately 105,000 acres of sugarbeets and chlorpyrifos is annually used on roughly 30 to 40% of those acres to combat pests. Minn-Dak members' annual yield per acre is significantly greater using chlorpyrifos than using other pesticides. EPA's revocation of chlorpyrifos tolerances for sugarbeets will cause a significant decrease in mature and healthy sugarbeets produced by Minn-Dak members, which will result in significant losses of profit for Minn-Dak and its members.

14. A prohibition on the use of chlorpyrifos impacts sugarbeets during the growing process and beyond—even after harvest. Harvested sugarbeets from

different farms in the cooperative are combined and stored together in large outdoor piles for up to 8 months. During such storage, sugarbeets that have been damaged by destructive pests will undergo respiration at an elevated rate, releasing heat which, in turn, causes significant deterioration within the storage piles. Since respiration is a thermally governed process, this elevated respiration impacts other sugarbeets in the pile that were otherwise healthy and storing without complications, and causes them to also respirate at elevated rates. Through this process, the increase in damaged sugarbeets in the storage piles reduces the amount of sugar that can be extracted for sale and results in lower revenues for both the cooperative and all its members. With the use of chlorpyrifos banned by the Final Rule, elevated respiration and heat release within Minn-Dak's sugarbeet piles during storage is likely to increase, resulting in even more lost profits for Minn-Dak and its members.

15. For Minn-Dak members, a prohibition on using chlorpyrifos will lead to greater harm with every passing year, as the population of destructive pests endemic to our region grows and affects more and more crops each growing season. This is why an immediate stay of the Final Rule is needed—pest infestation will be worse in 2023 if chlorpyrifos cannot be used in the spring of 2022.

16. EPA's decision will also have a significant impact on the efficiency of Minn-Dak's operations. Minn-Dak has 72,200 shares, with each share representing an acreage allocation of sugarbeets and each member being bound to a planting allocation set by the board of directors (currently 1.40 acres per share of stock +/- 0.03 acres per share of stock). Each member has the right and obligation to plant within the set tolerance of the acreage for which they own shares. If members are prohibited from using chlorpyrifos to control pests, Minn-Dak's board and management will need to decide if they should raise the acreage allocation to ensure the cooperative gets the total volume of sugarbeets it needs in a given year. If Minn-Dak raises the planting allocation too high, it risks having too many sugarbeets (resulting in increased disposal costs and negative environmental impacts and/or complications). If infestation is worse in a given year than predicted, Minn-Dak would not have enough sugarbeets (resulting in failing to meet customer demand). For these reasons, the inability for Minn-Dak members to use chlorpyrifos creates even more uncertainty into Minn-Dak's operations and will increase our costs of doing business.

17. For all these reasons, Minn-Dak and its members will suffer immediate, concrete and irreparable harm if the revocation of tolerances for the use of chlorpyrifos on sugarbeets goes into effect on February 28, 2022. As explained

above, Minn-Dak's members rely on chlorpyrifos to treat their sugarbeets beginning in May of each year and there are no effective alternatives.

18. With a prohibition on the use of chlorpyrifos, profits for Minn-Dak's members from sugarbeets will be significantly impacted. In 2020, EPA evaluated the benefits of chlorpyrifos on sugarbeets and estimated benefits of "almost $500 per acre in parts of Minnesota and North Dakota," which is consistent with research conducted by nationally-recognized expert Dr. Mark Boetel from North Dakota State University. EPA, Chlorpyrifos, Proposed Interim Registration Review Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf). Using EPA's numbers, I estimate unrecoverable losses of up to $17,500,000 per year for Minn-Dak's members. This is based upon multiplying EPA's $500/acre figure to the estimated average number of sugarbeet acres treated with chlorpyrifos by Minn-Dak's members every year. Such losses would be highly significant for Minn-Dak's members, who are already struggling to remain economically viable. Likewise, with Minn-Dak's members prohibited from using chlorpyrifos, I conservatively estimate unrecoverable losses of approximately $14,000,000 for Minn-Dak itself within the first 90 days of storage alone. This is based upon 980,000 tons of sugarbeets being placed into long-term storage with elevated rates of respiration. A

healthy sugarbeet crop stored in a proper fashion with undergo respiration at a rate that utilizes 0.5 pounds of sugar per ton of beets per day. Depending upon the level of field infestations, sugarbeets that have been damaged by insects have been documented by the USDA-ARS to undergo rates of respiration that are double or triple the normal baseline (with a RMA established price in the actuarial documents for raw sugar at $0.18 per pound).

19. These immediate, irreparable and devastating economic impacts on Minn-Dak's members and Minn-Dak will be exacerbated by inflation, which has increased the cost of operating a farming business (*e.g.*, fertilizer costs, fuel costs, chemical costs, and equipment costs) by over 30%. As farmers, Minn-Dak's members cannot demand that suppliers sell them products and services at the prices they need to make a profit or break even. EPA's refusal to modify tolerances for chlorpyrifos in accordance with its previous safety findings could not have come at a worse time for Minn-Dak and its members.

20. In addition to these devastating economic impacts, Minn-Dak and its members will suffer reputational harm as a result of EPA's action concerning the use of chlorpyrifos on sugarbeets. By revoking all tolerances, EPA attacked the safety of prior use of chlorpyrifos in the eyes of the public. For example, at the time it issued its Final Rule, EPA stated that its action was necessary to "ensure children, farmworkers, and all people are protected from the potentially dangerous

consequences of this pesticide," even though its own expert scientists found that 11 chlorpyrifos uses (including sugarbeets) in select areas of the country were safe and not of concern. EPA Takes Action to Address Risk from Chlorpyrifos and Protect Children's Health (August 18, 2021) (https://www.epa.gov/newsreleases/epa-takes-action-address-risk-chlorpyrifos-and-protect-childrens-health). In its Final Rule, EPA did not refute or provide any evidence to contradict these safety findings.

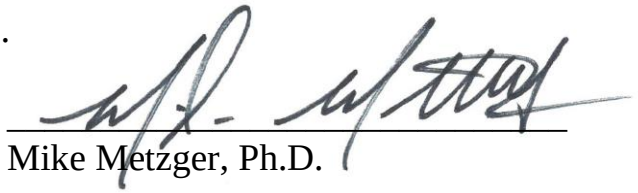
21. Minn-Dak expressed many of its grave concerns over EPA's decision to revoke all tolerances for chlorpyrifos in an objection letter I sent to EPA on October 28, 2021 (Long Decl. Ex N). The concerns expressed in that letter are even more true today, as inflation and prices continue to soar and plague the farming industry. As I explained in that letter, instead of inflicting irreparable harm on Minn-Dak and its members, EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on sugarbeets. EPA overruled Minn-Dak's objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

22. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on sugarbeets and success on the merits of the petition would fully

redress the harms above by allowing continued use chlorpyrifos on sugarbeets, consistent with the uses already deemed safe by EPA.

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

Dated this 25th day of February, 2022.



Mike Metzger, Ph.D.

EXHIBIT J

DECLARATION OF ALLISON CRITTENDEN ON BEHALF OF PETITIONER AMERICAN FARM BUREAU FEDERATION ("AFBF")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF ALLISON CRITTENDEN ON BEHALF OF PETITIONER AMERICAN FARM BUREAU FEDERATION ("AFBF")

I, Allison Crittenden, declare and state as follows:

1. I am the Director of Congressional Relations at American Farm Bureau Federation ("AFBF") and am authorized to make this declaration on behalf of AFBF, based upon my personal knowledge. I have held this position since March 2019. 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 continued use of chlorpyrifos consistent with EPA's previous safety findings—are central to the organizational purpose of AFBF.

3. I earned a B.S. in Applied Economic Management (Agricultural Economics) and a minor in Political Science from Virginia Tech in 2016.

4. I have solicited and reviewed information from numerous state Farm Bureau staff familiar with the use of chlorpyrifos among our membership regarding the consequences of revoking the tolerances for chlorpyrifos. This

declaration explains the adverse impact that will result if the petitioners motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on eleven high-benefit crops, which is set to take effect on February 28, 2022, is not granted.

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. EPA's decision to revoke tolerances for chlorpyrifos takes 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. EPA's action leaves 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 and 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, at 49 (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. EPA is proposing to unnecessarily revoke tolerances for these important high-benefit agricultural uses despite EPA’s own assessment that establishes that 11 high-benefit uses are safe. AFBF represents farmers who grow all 11 high-benefit crops.

10. Chlorpyrifos has broad spectrum effectiveness, 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.

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."

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 active on adult, egg and larval stages of most trunk boring pests.

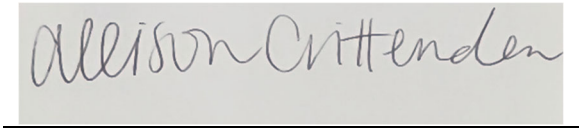
16. AFBF objects to the discontinuation of the 11 high-benefit chlorpyrifos uses and filed objections with EPA on October 27, 2021 (Long Decl. Ex. O). In addition, AFBF joined with 80 other agricultural stakeholders in a joint objection filed on October 19, 2021 (Long Decl. Ex. P). EPA overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

17. The decision to revoke tolerances of chlorpyrifos will negatively impact farmers, the environment and food production in a multitude of ways, and cause significant economic and environmental harm. EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on the eleven high benefit agricultural crops.

18. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on the eleven high-benefit agricultural crops and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on the eleven high-benefit agricultural crops, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.



Allison Crittenden

EXHIBIT K

DECLARATION OF KEVIN SCOTT ON BEHALF OF PETITIONER AMERICAN SOYBEAN ASSOCIATION

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF KEVIN SCOTT ON BEHALF OF PETITIONER AMERICAN SOYBEAN ASSOCIATION

I, Kevin Scott, declare and state as follows:

1. I serve as Chairman of the American Soybean Association. I previously served as ASA president, vice president and secretary, and I have been on the American Soybean Association board of directors since 2012. I am authorized to make this declaration 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. I have been farming for 40 years with my family. My wife and I have six children; our son, Jordan, farms with me. He is the fifth generation of our family to be farming on our land, and he will continue our family's farming operation when I am no longer farming.

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. The interests that the American Soybean Association seeks 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 the American Soybean Association.

4. A primary focus of the American Soybean Association is policy development and implementation. The American Soybean Association works to further the policy goals established by its membership. The American Soybean Association does this by testifying before Congress, engaging in lobbying efforts, contacting members, communicating to relevant audiences, and meeting with the media.

5. I submit this declaration in support of the (i) petition challenging the United States Environmental Protection Agency's ("EPA") Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule) and EPA's denial of the request for an administrative stay of the Final Rule; and (ii) petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos, which is set to take effect on February 28, 2022.

6. I have solicited and reviewed information from members of the American Soybean Association regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on eleven high benefit crops, including soybeans, which is set to take effect on February 28, 2022, is not granted.

7. Unless the Final Rule is stayed, at least with respect to soybeans, the American Soybean Association's members will be prohibited from using chlorpyrifos during the 2022 growing season. As explained below, that will cause immediate, substantial and unrecoverable economic loss for American Soybean Association members.

8. 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/.

9. Our industry depends significantly on chlorpyrifos as a critical crop protection tool available to fight pests that threaten our crops and cause economic harm. Soybean growers rely 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.

10. If growers lose access to chlorpyrifos, as would occur from the Final Rule, there is no one-to-one replacement scenario; growers will have to at a minimum spray two active ingredients to control these pests. The Final Rule will increase 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.

11. 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.

12. 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 under the status quo with chlorpyrifos.

13. EPA estimated in its November 2020 *Revised Benefits of Agricultural Uses of Chlorpyrifos* (https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0969) that U.S. soybean producers use chlorpyrifos on an estimated 3.08 million acres of soybeans annually. When extrapolated, U.S. soybean farmers in the conservative replacement scenario described above could expect see a $1.26 million annual cost increase to protect their crops. However, these costs are based on pricing data from 2017, and are likely even greater this year, due to inflation. Current inflation has increased the price of doing business as a farmer, including the price of insecticides and the labor needed to apply them. Given the small profit

margins soybean farmers face, even small increases in cost have significant impacts on the economic viability of their farms.

14. Producers in states like Minnesota, North Dakota, and South Dakota—where pest pressures are higher—will be disproportionally burdened by this impact. For example, an American Soybean Association member farmer in Minnesota explained in an October 2021 objection letter to EPA that years ago, when soybean aphids first emerged in his region, chlorpyrifos supplies were limited based on the regional spike in product demand, and acres that went untreated showed approximately 12 bushel/acre yield reductions. His letter is attached to Long Decl. as Ex. Q. As that farmer further explained, at the October 2021 market prices, a yield reduction of that size would be a loss of approximately $150/acre. His farm raises 700-800 acres of soybeans annually, and losing the ability to control aphids could cost his farming operation $120,000 per year based on those prices. However, that estimate considers only the impact of soybean aphids—it does not factor in the impacts of spider mites or other damaging insect pests controlled by chlorpyrifos.

15. Moreover, the scenario described above would account 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, as would result from the Final Rule, farmers will 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.

16. Moreover, requirements in the Final Rule will likely cause growers to lose significant volumes of food and feed product. The Final Rule, after it takes full effect on February 28, 2022, will require holders of food to provide special channels of trade documents verifying that any chlorpyrifos residues detected after that date were legal at the time of application and fall below the legal limit under the previously established tolerances. Foods that do not meet these requirements may be found adulterated. However, many soybean producers made chlorpyrifos applications prior to EPA's announcement of this action in August 2020, from which there will be detectable residues, albeit well below the level allowed by the tolerance. Soybean growers and other producers could not have known at that time that special channels of trade documents would be required, and thus this retroactive requirement will likely force them to lose otherwise legal food and feed

products. Without that documentation, significant volumes of soybeans are subject to seizure by the Food and Drug Administration, meaning that the soybeans cannot be sold. A reasonably average-sized grain bin 36 feet in diameter and 18 feet high can hold approximately 58,600 bushels of soybeans. The price of soybeans fluctuates, but assuming the current market rate of approximately $14.72/bushel, an individual grower could suffer approximately $862,592 in losses per grain bin.

17. In addition to the economic impacts described above, the American Soybean Association and its members will suffer reputational harm as a result of EPA's action concerning the use of chlorpyrifos on soybeans. By revoking all tolerances, EPA attacked the safety of prior use of chlorpyrifos in the eyes of the public. For example, at the time it issued its Final Rule, EPA stated that its action was necessary to "ensure children, farmworkers, and all people are protected from the potentially dangerous consequences of this pesticide," even though its own expert scientists found that 11 chlorpyrifos uses (including soybeans) in select areas of the country were safe and not of concern. EPA Takes Action to Address Risk from Chlorpyrifos and Protect Children's Health (August 18, 2021) (https://www.epa.gov/newsreleases/epa-takes-action-address-risk-chlorpyrifos-and-protect-childrens-health). In its Final Rule, EPA did not refute or provide any evidence to contradict these safety findings.

18. The American Soybean Association objects to the discontinuation of the 11 high-benefit chlorpyrifos uses, including use on soybeans, and filed objections with EPA on October 19, 2021 in connection with a coalition of growers, retailers, cooperatives, applicators, refiners, crop consultants, and other agricultural stakeholders, requesting that EPA stay implementation of the Final Rule. Those objections are attached to the Long Decl. as Ex. P. On October 29, 2021, the American Soybean Association filed individual, supplemental objections, requesting an evidentiary hearing and a stay of the implementation of the Final Rule. Those supplemental objections are attached to the Long Decl. as Ex. R. On February 22, 2022, EPA overruled these objections to the Final Rule and the request for a hearing and stay. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

19. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on the eleven high-benefit agricultural crops, including soybeans, and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on the eleven high-benefit agricultural crops, including soybeans, consistent with the uses already deemed safe by EPA.

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

Dated this ___25____ day of February, 2022.

Kevin Scott

EXHIBIT L

DECLARATION OF GEORGE GOBLISH IN SUPPORT OF PETITIONER AMERICAN SOYBEAN ASSOCIATION

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF GEORGE GOBLISH
IN SUPPORT OF PETITIONER
AMERICAN SOYBEAN ASSOCIATION

I, George Goblish, declare and state as follows:

1. I own and operate Goblish Farms, which is a family farm located in Vesta, Minnesota. I am authorized to make this declaration on behalf of Goblish Farms, based upon my personal knowledge.

2. I submit this declaration in support of the (i) petition challenging the United States Environmental Protection Agency's ("EPA") Final Rule for Chlorpyrifos Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule) and EPA's denial of the request for an administrative stay of the Final Rule; and (ii) petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos, which is set to take effect on February 28, 2022.

3. On August 30, 2021, EPA issued its Final Rule revoking all tolerances for chlorpyrifos use on soybeans and ten other crops, despite EPA's previous finding that use of chlorpyrifos on these 11 crops was safe in certain regions of the country, including Minnesota.

4. Unless the Final Rule is stayed, at least with respect to soybeans, Goblish Farms will be prohibited from using chlorpyrifos during the 2022 growing season. As explained below, that would cause immediate, substantial and unrecoverable economic loss for Goblish Farms.

5. I have been farming since 1987. I bought my first farm when I was a senior in high school, and my father and I grew the operation together for many

years prior to his retirement. Today, Goblish Farms is still a family operation. My wife, Jenifer, and I farm with our oldest son, Jordan, and our other three children (Jayden, age 18; Jazmin, age 27; and Joshua, age 29) also help out. Our son Jordan plans to continue Goblish Farms' operation when I am no longer farming, and if there is room in the operation, I would love for my other children to join him.

6. I am a member of the American Soybean Association, and I serve on its board of directors. I have served on the board of directors for the past four years. I am also a member of the Minnesota Soybean Growers Association.

7. On my farm, we typically grow 400 to 800 acres of soybeans, and we rely on chlorpyrifos to treat those acres. I estimate that when we grow 800 acres of soybeans, our soybean acres produce approximately one-third of Goblish Farms' annual revenue.

8. Chlorpyrifos is critically important to our farm in protecting our soybean crops from destruction due to insects such as aphids and two-spotted spider mites ("TSM"). We use chlorpyrifos to protect our soybean crops because it is effective, has favorable environmental characteristics, and is affordable.

9. We apply chlorpyrifos only as needed, but in any particular five-year period, the pest pressure is typically great enough that we typically have to apply chlorpyrifos in four of those years. It is rare that we have two consecutive years in

which the pest pressure does not require us to apply chlorpyrifos to protect our soybean crops.

10. To determine whether and when to apply chlorpyrifos to our soybean crops, we begin scouting our fields every day in mid- to late-summer (July and August). Scouting aphids involves walking to different parts of the field and manually counting the number of aphids on a given plant. Scouting TSM involves walking to different parts of the field, and physically shaking a plant in each area so that the pests fall onto a white sheet of paper, and then counting the number of TSM on the paper. For aphids and TSM, respectively, there are threshold numbers of pests per plant, and when scouting shows that a respective threshold has been reached, we need to apply chlorpyrifos to control the infestation. If left untreated, aphids and TSM can significantly reduce our soybean crop yield.

11. Since we began applying chlorpyrifos in the mid-1990s, chlorpyrifos is the only insecticide Goblish Farms has used to control destructive aphids and TSM on our soybean crops. Although other insecticides are commercially available, I understand that they are more expensive than chlorpyrifos and that no single insecticide would effectively control both the aphids and TSM that attack and consume my soybean crops. I am aware that the American Soybean Association has determined that there is no one-to-one replacement for chlorpyrifos; based on that analysis, if I cannot use chlorpyrifos, I will have to at a

minimum spray two active ingredients to control for both aphids and TSM. Thus, with a prohibition on the use of chlorpyrifos, profits for Goblish Farms will be significantly impacted.

12. Based on a 2017 estimate, and an analysis performed by the American Soybean Association (explained in objections filed with EPA on October 29, 2021, which are attached to the Long Decl. as Ex. R filed in this case) just purchasing the additional insecticides will increase my costs by roughly $.41 per crop acre treated as compared purchasing chlorpyrifos. Additionally, on my farm, each additional insecticide costs me an additional approximately $12/acre per pass just to apply (which is approximately $4,800 per pass if I plant 400 acres of soybeans, and approximately $9,600 per pass if I plant 800 acres of soybeans). Because I typically need to spray chlorpyrifos only once per year, a two-pass insecticide strategy would at least double my insecticide application costs. With the increased purchase costs and increased application costs, soybean growing costs at Goblish Farms will increase significantly if we cannot use chlorpyrifos.

13. The immediate, irreparable and devastating economic impacts described above on our family farm will be exacerbated by inflation, which has more than doubled the cost of many inputs required to operate our farming business (*e.g.*, fertilizer costs, fuel costs, chemical costs, and equipment costs). As a farmer, I cannot demand that suppliers sell me products and services at the prices

Goblish Farms needs to make a profit or break even. EPA's refusal to modify tolerances for chlorpyrifos in accordance with its safety findings could not have come at a worse time for my farm due to these inflation challenges.

14. For all these reasons, Goblish Farms will suffer immediate, concrete, and irreparable harm if the revocation of tolerances for the use of chlorpyrifos on soybeans goes into effect on February 28, 2022. As explained above, Goblish Farms needs chlorpyrifos to treat its soybean beginning in summer 2022, and the available alternatives will increase my operational costs by requiring me to purchase and apply more insecticides, and will reduce my ability to be a good environmental steward by requiring the application of greater volumes of pesticides in the environment.

15. Instead of inflicting irreparable harm on farmers, EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on soybeans.

16. On behalf of me and its other members, the American Soybean Association filed objections with EPA on October 19, 2021 (Long Decl. Ex. P) in connection with a coalition of growers, retailers, cooperatives, applicators, refiners, crop consultants, and other agricultural stakeholders, requesting that the EPA stay implementation of the Final Rule. On October 29, 2021, objections filed by the American Soybean Association on behalf of me and its other members, requested

an evidentiary hearing and a stay of the implementation of the Final Rule (Long Decl. Ex. R). On February 22, 2022, EPA overruled these objections to the Final Rule and the request for a stay and hearing. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

17. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on soybeans and success on the merits of the petition would fully redress the harms above by allowing my family farm to continue to use chlorpyrifos on soybeans and other crops, consistent with the uses already deemed safe by EPA.

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

Dated this ___25____ day of February, 2022.

George Goblish

EXHIBIT M

DECLARATION OF ROBB EWOLDT ON BEHALF OF PETITIONER IOWA SOYBEAN ASSOCIATION ("ISA")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF ROBB EWOLDT ON BEHALF OF PETITIONER IOWA SOYBEAN ASSOCIATION ("ISA")

I, Robb Ewoldt, declare and state as follows:

1. I am the President of the Iowa Soybean Association ("ISA") and am authorized to make this declaration on behalf of ISA, based on my personal knowledge and experience. I have worked on behalf of Iowa's soybean farmers since 2016.

2. I am a long-time advocate of caring for the land and water. My family's farming operation reduces the use of crop protection products and implements innovative conservation practices, including installation of the first bioreactor (underground water denitrification system) in eastern Iowa. My wife, Jennifer, and I have been recognized for our commitment to conservation and agricultural policy. We have together been recipients of the Wergin Good Farm Neighbor Award, the River Action's Eddy Award, and the Iowa Farm Environmental Leader Award.

3. My responsibilities include leading the ISA Board of Directors as it develops policies and programs to manage and conduct the business of the ISA. The interests that ISA 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 and mission of ISA.

4. I have solicited and reviewed information from farmers and members of ISA regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for

chlorpyrifos use on Iowa soybeans, which is set to take effect on February 28, 2022, is not granted.

5. Located in Ankeny, Iowa, ISA is a statewide, not-for-profit, member-driven organization that brings together farmers, industry experts and partners, and staff who are driven to deliver results to our statewide farmer membership. ISA is driven to deliver increased soybean demand through market development and new uses, farmer-focused research, timely information and know-how, and policy initiatives enabling farmers and the industry to flourish. Our farmers grow 14% of the nation's soybeans. We represent nearly 40,000 farmers in Iowa, encompassing approximately 10 million soybean acres annually. In 2021, our farmers yielded, on average, 62 bushels of soybeans per acre. This equates to over 622 million bushels of soybeans produced in Iowa in 2021.

6. Chlorpyrifos is widely used in Iowa to manage a variety of insect pests in several important agricultural crops. In recent years, chlorpyrifos has been applied on as much as 10% of Iowa's soybean acres each year.

7. In soybeans, chlorpyrifos is used to control several economically damaging insect pests, most notably soybean aphids and two-spotted spider mites (TSM). It is applied in a spray application to "knock down" aphids and mites already present on crops when pests reach economically damaging levels. It is very effective for these purposes.

8. If left uncontrolled, aphids and TSM can reduce soybean yields up to 40 and 60 percent, respectively. Aphid and TSM populations can flare and have a greater impact on yields in drought conditions, as many areas of Iowa experienced last growing season. Additionally, some of these pests can vector plant pathogenic viruses (e.g., soybean mosaic virus) which can result in double-digit yield losses and have been documented in rare instances to reduce yields greater than 90 percent.

9. Chlorpyrifos is used as part of an integrated pest management (IPM) system to control insect pests through multiple means (maintaining beneficial insects that are predators of aphids and mites; rotating different crop types to prevent insect pests from becoming established over multiple growing seasons; mixing and rotating insecticides with different modes of action to minimize resistance risks; etc.).

10. Growers are encouraged to regularly scout fields to avoid applying product unless pests reach economically damaging levels. This reduces product use and applicator costs, preserves product efficacy (i.e., prevent pest populations from developing resistance to a pesticide), and minimizes pesticidal applications in the environment.

11. In Iowa, we have a limited number of options for control of soybean aphids and spider mites. Removal of any of these options would result in a rapid build-up of insecticide resistance to any remaining options. The loss of chlorpyrifos as a tool for controlling soybean aphids and spider mites has the potential to severely

disrupt Iowa's soybean crop under the right weather, plant genetics, and insect pressure conditions.

12. Because chlorpyrifos is an effective and broad-spectrum insecticide, there is no one-to-one replacement for controlling both soybean aphids and spider mites. Without the ability to use chlorpyrifos, soybean growers would need at least two alternative products to control common soybean pests, such as aphids and TSM. Aphid populations are increasingly developing resistance to other insecticides, meaning growers already have fewer tools to rotate or mix to prevent populations becoming resistant to remaining tools. Also, other insecticides are under intense scrutiny for potential harm to pollinators and for other environmental and health concerns.

13. The resistance to other pesticides is not theoretical. It has been documented in Iowa. For instance, in northern Iowa, soybean aphid resistance to Pyrethroids has been documented.

14. If growers have fewer tools to rotate and mix as a result of losing chlorpyrifos, the effectiveness of the remaining tools will erode more quickly as pest populations develop resistance.

15. During the ongoing disruptions in the supply chain, nearly all crop protection tools have increased in cost and decreased in supply. If growers lose access

to chlorpyrifos, demand for these replacement tools will also increase, pushing costs higher and reducing available supplies.

16. Over time, if chlorpyrifos cannot be used, growers will experience greater crop yield losses as the number of available tools decreases and pests become resistant. The ability of farmers to be good environmental stewards will be diminished, as well their ability to meet the growing demand for soybean oil used for the production of environmentally friendly fuels such as biodiesel, renewable diesel, and sustainable aviation fuel (SAF); let alone, farmers' ability to produce enough soybeans for human consumption.

17. We are also very concerned about what will happen if residues are detected on soybeans after the rule goes into full effect if growers do not possess retroactively required channels of trade documents to prove applications were made legally (i.e., prior to the effective date of the revocation). Since soybeans are comingled commodities stored for potentially extended periods of time in large grain bins and at elevators, a detection of chlorpyrifos on soybeans stored for 3-4 months could result in the loss of millions of dollars of soybeans or soy-based products at various points in the supply chain.

18. We are also concerned growers will have significant volumes of otherwise unusable existing stocks with no clear instructions for safe, responsible

mass disposal. This could result in significant disposal costs for growers or environmental harms.

19. In the December 2020 chlorpyrifos Proposed Interim Registration Decision (PID), EPA, Chlorpyrifos, Proposed Interim Registration Review Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf), EPA identified 11 high-benefit agricultural uses that "the agency has determined will not pose potential risks of concern with a Food Quality Protection Act (FQPA) safety factor of 10X and may be considered for retention." The PID is clear that these 11 agricultural uses meet the Federal Food Drug and Cosmetics Act safety standard when EPA evaluated the aggregate exposure for both food residues and drinking water concentrations.

20. Soybeans grown in Iowa are one of the uses EPA determined was safe, even with the highly conservative 10x FQPA safety factor.

21. As EPA's own evaluation has shown, the Iowa soybean industry can use chlorpyrifos to produce a nutritional crop in a safe manner.

22. Without funding support and adequate time for the development and commercialization of other chemical, genetic, and cultural practice options to chlorpyrifos, ISA does not support the discontinuation of chlorpyrifos on soybeans grown in Iowa. EPA has ignored its own safety findings that show chlorpyrifos can

be used with no risk of harm in the Iowa soybean industry. The decision to revoke tolerances of chlorpyrifos will cause this industry irreparable harm.

23. On October 19, 2021, the ISA joined with 80 agricultural stakeholders to file objections with EPA (Long Decl. Ex. P). In these objections, we stated the tolerance revocations applicable to the 11 crops which met the safety standard should not be revoked. Iowa soybeans are one of these crops. EPA overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

24. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on Iowa soybeans and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on Iowa soybean crops, consistent with the uses already deemed safe by EPA.

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

Dated this 27th day of February 2022.

Robert Ewoldt

EXHIBIT N

DECLARATION OF JOSEPH SMENTEK ON BEHALF OF PETITIONER MINNESOTA SOYBEAN GROWERS ASSOCIATION ("MSGA")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF JOSEPH SMENTEK ON BEHALF OF PETITIONER MINNESOTA SOYBEAN GROWERS ASSOCIATION ("MSGA")

I, Joseph Smentek, declare and state as follows:

1. I am the Executive Director of the Minnesota Soybean Growers Association ("MSGA") and am authorized to make this declaration on behalf of MSGA, based on my personal knowledge. I have worked on behalf of Minnesota's soybean farmers since 2013.

2. I have an LL.M. in Environmental Law from Pace University School of Law and a J.D. from Hamline School of Law.

3. My responsibilities include managing the day to day business of the MSGA, including carrying out the strategic plan of the MSGA board and implementing its legislative agenda. The interests that MSGA seeks 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 MSGA.

4. I have solicited and reviewed information from numerous growers and members of MSGA regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on Minnesota soybeans, which is set to take effect on February 28, 2022, is not granted.

5. Located in Mankato, Minnesota, MSGA is a trade association that has been representing the soybean growers of Minnesota since 1962. We represent 27,865 soybean farms in Minnesota, encompassing over 8 million soybean acres.

6. Chlorpyrifos is widely used in Minnesota to manage a variety of pests in several important agricultural crops. Based on United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) surveys conducted between 2013 and 2018, chlorpyrifos was applied on approximately 11% of Minnesota's soybean acres (almost 900,000 acres) each year.

7. In soybeans, chlorpyrifos is used to control several economically-damaging insect pests, most notably soybean aphids and two-spotted spider mites (TSM). It is applied in a spray application to "knock down" aphids and mites already present on crops when pests reach economically-damaging levels. It is very effective for these purposes.

8. If left uncontrolled, aphids and TSM can reduce soybean yields up to 40 and 60 percent, respectively. Aphid and TSM populations can flare and have a greater impact on yields in drought conditions, as many areas of Minnesota experienced last growing season. Additionally, these pests can vector secondary viruses (e.g. soybean mosaic virus) which can result in double-digit yield losses and have been documented in rare instances to reduce yields greater than 90 percent.

9. Chlorpyrifos is used as part of an integrated pest management (IPM) system to control insect pests through multiple means (maintaining beneficial insects that are predators of aphids and mites; rotating different crop types to prevent insect pests from becoming established over multiple growing seasons; mixing and rotating insecticides with different modes of action to minimize resistance risks; etc.).

10. Growers regularly scout fields to avoid applying product unless pests reach economically-damaging levels. This reduces product use and applicator costs; preserves product efficacy (i.e. prevent pest populations from developing resistance to a pesticide); and minimizes pesticidal applications in the environment.

11. In Minnesota, we have a limited number of options for control of soybean aphids and spider mites. Removal of any of these options would result in a rapid buildup of insecticide resistance to the other remaining options. The loss of chlorpyrifos as a tool for controlling soybean aphids and spider mites would likely harm Minnesota's soybean harvest.

12. There is no one-to-one replacement for chlorpyrifos. Soybean growers would need at least two alternative products to control common soybean pests, such as aphids and TSM. Aphid populations are increasingly developing resistance to other insecticides, meaning growers already have fewer tools to rotate or mix to prevent populations becoming resistant to remaining tools.

13. The resistance to other pesticides is not theoretical. It has been documented across Minnesota. For instance, in Minnesota, soybean aphid resistance to Pyrethroids has been documented.

14. If growers have fewer tools to rotate and mix as a result of losing chlorpyrifos, the effectiveness of the remaining tools will erode more quickly as pest populations develop resistance.

15. During ongoing supply chain disruptions, nearly all crop protection tools have increased in cost and decreased in supply. If growers lose access to chlorpyrifos, demand for these replacement tools will also increase, pushing costs up further and reducing available supplies.

16. Minnesota's Soybean Growers have also faced increased scrutiny of other chemistries. For example, several legislative bills are being considered that would limit the availability of alternatives to chlorpyrifos in Minnesota.

17. Over time, if chlorpyrifos cannot be used, costs will increase and growers will experience greater crop yield losses as the number of available tools decreases once pests select for resistance to remaining tools. 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.

18. The increase in use of other chemicals, along with the impacts to other species, including endangered species, will lead to increased scrutiny of these other chemicals. Increased use will cause renewed scrutiny on these chemistries and a need for organizations such as ours to increase spending to defend what few tools are left.

19. We are also very concerned about what will happen if residues are detected on soybeans after the rule goes into full effect if growers do not possess retroactively-required channels of trade documents to prove applications were made legally (i.e., prior to the effective date of the revocation). Since soybeans are comingled commodities stored in large grain bins and at elevators, a detection could result in the loss of millions of dollars of soybeans or soy-based products at various points in the supply chain.

20. We are also concerned growers will have significant volumes of otherwise unusable existing stocks with no clear instructions for safe, responsible mass disposal. This could result in significant disposal costs for growers or environmental harms.

21. In the December 2020 chlorpyrifos Proposed Interim Registration Decision (PID), EPA, Chlorpyrifos, Proposed Interim Registration Review Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-

12/documents/chlorpyrifos_pid_signed_120320.pdf), EPA identified 11 high-benefit agricultural uses that "the agency has determined will not pose potential risks of concern with a Food Quality Protection Act (FQPA) safety factor of 10X and may be considered for retention." The PID is clear that these 11 agricultural uses meet the Federal Food Drug and Cosmetics Act safety standard when EPA evaluated the aggregate exposure for both food residues and drinking water concentrations.

22. Soybeans grown in Minnesota are one of the uses EPA determined was safe, even with the highly conservative 10x FQPA safety factor.

23. As EPA's own evaluation has shown, the Minnesota soybean industry can use chlorpyrifos to produce a nutritional crop in a safe manner.

24. MSGA does not support the discontinuation of chlorpyrifos on Minnesota soybean crops. EPA has ignored its own safety finding as EPA has shown that chlorpyrifos can be used with no risk of harm in the Minnesota soybean industry. The decision to revoke tolerances of chlorpyrifos will cause this industry irreparable harm.

25. On October 19, 2021, MSGA joined with 80 other agricultural stakeholders to file objections with EPA (Long Decl. Ex. P). In these objections we stated that the tolerance revocations applicable to the 11 crops which met the safety standard should not be revoked. Minnesota soybeans are one of these crops. EPA

overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

26. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on Minnesota soybeans and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on Minnesota soybean crops, consistent with the uses already deemed safe by EPA.

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

Dated this 24 day of February, 2022.

Joseph Smentek

EXHIBIT O

DECLARATION OF MATT WRIGHT ON BEHALF OF PETITIONER MISSOURI SOYBEAN ASSOCIATION ("MOSOY")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF MATT WRIGHT ON BEHALF OF PETITIONER MISSOURI SOYBEAN ASSOCIATION ("MOSOY")

I, Matt Wright, declare and state as follows:

1. I am the President of the Missouri Soybean Association ("MOSOY") and am authorized to make this declaration on behalf of MOSOY, based upon my personal knowledge. I have worked on behalf of Missouri's soybean farmers since 2012.

2. I am a full-time farmer raising soybeans, corn and beef cattle on our northeast Missouri farm operation, located near Emden, Missouri. On our farm, we rotate both soybeans and corn on our cropland and manage a cow-calf beef cow herd.

3. As President of MOSOY, I represent the nearly 18,000 Missouri soybean farmers who plant up to 6 million acres annually of soybeans. The interests that MOSOY seeks 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 MOSOY.

4. I have solicited and reviewed information from numerous growers and members of MOSOY regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on Missouri soybeans, which is set to take effect on February 28, 2022, is not granted.

5. Located in Jefferson City, MOSOY is a trade association that has been representing the soybean growers of Missouri since 1966. MOSOY is committed to helping increase the demand for Missouri soybeans through public policy initiatives, market research, promotions and educational support. MOSOY and its partners invest in and manage existing research and education programs and develops new marketing and promotion programs on behalf of Missouri soybean farmers.

6. Chlorpyrifos is widely used in Missouri to manage a variety of pests in several important agricultural crops. Chlorpyrifos is applied to approximately 56,000 acres of Missouri soybeans each year.

7. In soybeans, chlorpyrifos is used to control several economically-damaging insect pests, most notably soybean aphids and two-spotted spider mites (TSM). It is applied in a spray application to "knock down" aphids and mites already present on crops when pests reach economically-damaging levels. It is very effective for these purposes.

8. If left uncontrolled, aphids and TSM can reduce soybean yields up to 40 and 60 percent, respectively. Aphid and TSM populations can flare and have a greater impact on yields in drought conditions, as many areas of Missouri experienced last growing season. Additionally, these pests can vector secondary viruses (e.g. soybean mosaic virus) which can result in double-digit yield losses

and have been documented in rare instances to reduce yields greater than 90 percent.

9. Chlorpyrifos is used as part of an integrated pest management (IPM) system to control insect pests through multiple means (maintaining beneficial insects that are predators of aphids and mites; rotating different crop types to prevent insect pests from becoming established over multiple growing seasons; mixing and rotating insecticides with different modes of action to minimize resistance risks; etc.).

10. Growers regularly scout fields to avoid applying product unless pests reach economically-damaging levels. This reduces product use and applicator costs; preserves product efficacy (i.e. prevent pest populations from developing resistance to a pesticide); and minimizes pesticidal applications in the environment.

11. There is no one-to-one replacement for chlorpyrifos. Without the ability to use chlorpyrifos, soybean growers would need at least two alternative products to control common soybean pests, such as aphids and TSM. Aphid populations are increasingly developing resistance to other insecticides, meaning growers already have fewer tools to rotate or mix to prevent populations becoming resistant to remaining tools.

12. If growers have fewer tools to rotate and mix as a result of losing chlorpyrifos, the effectiveness of the remaining tools will erode more quickly as pest populations develop resistance.

13. During the ongoing disruptions in the supply chain, nearly all crop protection tools have increased in cost and decreased in supply. If growers lose access to chlorpyrifos, demand for these replacement tools will also increase, pushing costs up further and reducing available supplies.

14. Over time, if chlorpyrifos cannot be used, costs will increase and growers will experience greater crop yield losses as the number of available tools decreases as pests become resistant to remaining tools. 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.

15. The increase in use of other chemicals, along with the impacts to other species, including endangered species, will lead to increased scrutiny of these other chemicals. Increased use will cause renewed scrutiny on these chemistries and a need for organizations such as ours to increase spending to defend what few tools are left.

16. We are also very concerned about what will happen if residues are detected on soybeans after the rule goes into full effect if growers do not possess

retroactively-required channels of trade documents to prove applications were made legally (i.e., prior to the effective date of the revocation). Since soybeans are comingled commodities stored in large grain bins and at elevators, a detection could result in the loss of millions of dollars of soybeans or soy-based products at various points in the supply chain.

17. We are also concerned growers will have significant volumes of otherwise unusable existing stocks with no clear instructions for safe, responsible mass disposal. This could result in significant disposal costs for growers or environmental harms.

18. In the December 2020 chlorpyrifos Proposed Interim Registration Decision (PID) EPA, Chlorpyrifos, Proposed Interim Registration Review Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf), EPA identified 11 high-benefit agricultural uses that "the agency has determined will not pose potential risks of concern with a Food Quality Protection Act (FQPA) safety factor of 10X and may be considered for retention." The PID is clear that these 11 agricultural uses meet the Federal Food Drug and Cosmetics Act safety standard when EPA evaluated the aggregate exposure for both food residues and drinking water concentrations.

19. Soybeans grown in Missouri are one of the uses EPA determined was safe, even with the highly conservative 10x FQPA safety factor.

20. As EPA's own evaluation has shown, the Missouri soybean industry can use chlorpyrifos to produce a nutritional crop in a safe manner.

21. MOSOY does not support the discontinuation of chlorpyrifos on Missouri soybean crops. EPA has ignored its own safety finding as EPA has shown that chlorpyrifos can be used with no risk of harm in the Missouri soybean industry. The decision to revoke tolerances of chlorpyrifos will cause this industry irreparable harm.

22. On October 19, 2021, MOSOY joined with 80 other agricultural stakeholders to file objections with EPA (Long Decl. Ex. P). In these objections we stated that the tolerance revocations applicable to the 11 crops which met the safety standard should not be revoked. Missouri soybeans are one of these crops. EPA overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

23. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on Missouri soybeans and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on Missouri soybean crops, consistent with the uses already deemed safe by EPA.

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

Dated this 25 day of February, 2022.

Matt Wright

EXHIBIT P

DECLARATION OF LORI LUEBBE ON BEHALF OF PETITIONER NEBRASKA SOYBEAN ASSOCIATION ("NSA")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF LORI LUEBBE ON BEHALF OF PETITIONER NEBRASKA SOYBEAN ASSOCIATION ("NSA")

I, Lori Luebbe, declare and state as follows:

1. I am the Executive Director of the Nebraska Soybean Association ("NSA") and am authorized to make this declaration on behalf of NSA, based on my personal knowledge. I have worked on behalf of Nebraska's soybean farmers since 1996.

2. I am a graduate of the University of Nebraska, Lincoln, (UNL) Agriculture College with a Bachelor's degree in General Agriculture. I was raised on a row crop (soybeans and corn) farm near Waverly, Nebraska where my family still farms today. I am involved with the Alliance for the Future of Agriculture in Nebraska (A-FAN) serving as president and a volunteer judge for Nebraska FFA State convention leadership programs. I am a member of the Nebraska Ag Builders and serve on the board of directors for the Nebraska Agriculture Leadership Council.

3. My responsibilities include carrying out the directives of the NSA Board of Directors and improving the competitiveness and profitability for Nebraska Soybean farmers. The interests that NSA 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 NSA.

4. I have solicited and reviewed information from numerous growers and

members of NSA regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on Nebraska soybeans, which is set to take effect on February 28, 2022, is not granted.

5. Located in Lincoln, Nebraska, NSA is a trade association that serves the needs of Nebraska soybean farmers to enhance their profit potential and success. NSA expands public awareness of soybean markets and uses and is the voice and advocate for the industry. We represent more than 18,300 farms in Nebraska, encompassing approximately 5.5 Million soybean acres annually. In 2021 Nebraska produced 344 million bushels of soybeans, equating to over 20 billion pounds of soybeans harvested.

6. Chlorpyrifos is widely used in Nebraska to manage a variety of pests in several important agricultural crops. Chlorpyrifos is applied on approximately 2.5% of Nebraska's soybean acres each year.

7. In soybeans, chlorpyrifos is used to control several economically-damaging insect pests, most notably soybean aphids and two-spotted spider mites (TSM). It is applied in a spray application to "knock down" aphids and mites already present on crops when pests reach economically-damaging levels. It is very effective for these purposes.

8. If left uncontrolled, aphids and TSM can reduce soybean yields up to 40 and 60 percent, respectively. Aphid and TSM populations can flare and have a greater impact on yields in drought conditions, as many areas of Nebraska experienced last growing season. Additionally, these pests can vector secondary viruses (e.g. soybean mosaic virus) which can result in double-digit yield losses and have been documented in rare instances to reduce yields greater than 90 percent.

9. Chlorpyrifos is used as part of an integrated pest management (IPM) system to control insect pests through multiple means (maintaining beneficial insects that are predators of aphids and mites; rotating different crop types to prevent insect pests from becoming established over multiple growing seasons; mixing and rotating insecticides with different modes of action to minimize resistance risks; etc.).

10. Growers regularly scout fields to avoid applying product unless pests reach economically-damaging levels. This reduces product use and applicator costs; preserves product efficacy (i.e. prevent pest populations from developing resistance to a pesticide); and minimizes pesticidal applications in the environment.

11. In Nebraska, we have a limited number of options for control of soybean aphids and spider mites. Removal of any of these options would result in a rapid buildup of insecticide resistance to the other remaining options. The loss of

chlorpyrifos as a tool for controlling soybean aphids and spider mites would likely harm Nebraska's soybean harvest.

12. There is no one-to-one replacement for chlorpyrifos. Without the ability to use chlorpyrifos, soybean growers would need at least two alternative products to control common soybean pests, such as aphids and TSM. Aphid populations are increasingly developing resistance to other insecticides, meaning growers already have fewer tools to rotate or mix to prevent populations becoming resistant to remaining tools.

13. The resistance to other pesticides is not theoretical. It has been documented across Nebraska. For instance, in Nebraska, soybean aphid resistance to Pyrethroids has been documented.

14. If growers have fewer tools to rotate and mix as a result of losing chlorpyrifos, the effectiveness of the remaining tools will erode more quickly as pest populations develop resistance.

15. During the ongoing disruptions in the supply chain, nearly all crop protection tools have increased in cost and decreased in supply. If growers lose access to chlorpyrifos, demand for these replacement tools will also increase, pushing costs up further and reducing available supplies.

16. Over time, if chlorpyrifos cannot be used, costs will increase and growers will experience greater crop yield losses as the number of available tools

decreases as pests become resistant. 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.

17. The increase in use of other chemicals, along with the impacts to other species, including endangered species, will lead to increased scrutiny of these other chemicals. Increased use will cause renewed scrutiny on these chemistries and a need for organizations such as ours to increase spending to defend what few tools are left.

18. We are also very concerned about what will happen if residues are detected on soybeans after the rule goes into full effect if growers do not possess retroactively-required channels of trade documents to prove applications were made legally (i.e., prior to the effective date of the revocation). Since soybeans are comingled commodities stored in large grain bins and at elevators, a detection could result in the loss of millions of dollars of soybeans or soy-based products at various points in the supply chain.

19. We are also concerned growers will have significant volumes of otherwise unusable existing stocks with no clear instructions for safe, responsible mass disposal. This could result in significant disposal costs for growers or environmental harms.

20. In the December 2020 chlorpyrifos Proposed Interim Registration Decision (PID) EPA, Chlorpyrifos, Proposed Interim Registration Review Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf), EPA identified 11 high-benefit agricultural uses that "the agency has determined will not pose potential risks of concern with a Food Quality Protection Act (FQPA) safety factor of 10X and may be considered for retention." The PID is clear that these 11 agricultural uses meet the Federal Food Drug and Cosmetics Act safety standard when EPA evaluated the aggregate exposure for both food residues and drinking water concentrations.

21. Soybeans grown in Nebraska are one of the uses EPA determined was safe, even with the highly conservative 10x FQPA safety factor.

22. As EPA's own evaluation has shown, the Nebraska soybean industry can use chlorpyrifos to produce a nutritional crop in a safe manner.

23. NSA does not support the discontinuation of chlorpyrifos on Nebraska soybean crops. EPA has ignored its own safety finding as EPA has shown that chlorpyrifos can be used with no risk of harm in the Nebraska soybean industry. The decision to revoke tolerances of chlorpyrifos will cause this industry irreparable harm.

24. On October 19, 2021, NSA joined with 80 other agricultural stakeholders to file objections with EPA (Long Decl. Ex. P). In these objections we stated that the tolerance revocations applicable to the 11 crops which met the safety standard should not be revoked. Nebraska soybeans are one of these crops. EPA overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

25. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on Nebraska soybeans and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on Nebraska soybean crops, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.

Lori Luebbe

Lori Luebbe

EXHIBIT Q

DECLARATION OF JERRY SCHMITZ ON BEHALF OF PETITIONER SOUTH DAKOTA SOYBEAN ASSOCIATION ("SDSA")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AND UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

DECLARATION OF JERRY SCHMITZ ON BEHALF OF PETITIONER SOUTH DAKOTA SOYBEAN ASSOCIATION ("SDSA")

I, Jerry Schmitz, declare and state as follows:

1. I am the Executive Director of the South Dakota Soybean Association ("SDSA") and am authorized to make this declaration on behalf of SDSA, based on my personal knowledge. I have worked on behalf of South Dakota's soybean farmers since 2018.

2. I owned and operated a row-crop farm in Southeast South Dakota for 38 years before becoming the Executive Director of SDSA.

3. My responsibilities include carrying out the directives of the SDSA Board of Directors and improving the competitiveness and profitability for South Dakota soybean farmers. The interests that SDSA 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 SDSA.

4. I have solicited and reviewed information from numerous growers and members of SDSA regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on South Dakota soybeans, which is set to take effect on February 28, 2022, is not granted.

5. Located in Sioux Falls, South Dakota, SDSA is a trade association that represents member producers of all sizes, giving them all a strong voice in the

formation of legislation and public policy that affects long-term profitability of soybean producers and the industry as a whole. We represent nearly 11,000 farms in South Dakota, encompassing approximately 5.4 million soybean acres, producing an average of 14.8 billion pounds annually.

6. Chlorpyrifos is widely used in South Dakota to manage a variety of pests in several important agricultural crops. Chlorpyrifos is applied on approximately 10% of South Dakota's soybean acres each year.

7. In soybeans, chlorpyrifos is used to control several economically-damaging insect pests, most notably soybean aphids and two-spotted spider mites (TSM). It is applied in a spray application to "knock down" aphids and mites already present on crops when pests reach economically-damaging levels. It is very effective for these purposes.

8. If left uncontrolled, aphids and TSM can reduce soybean yields up to 40 and 50 percent, respectively. Aphid and TSM populations can flare and have a greater impact on yields in drought conditions, as many areas of South Dakota experienced last growing season. Additionally, these pests can vector secondary viruses (e.g. soybean mosaic virus) which can result in double-digit yield losses and have been documented in rare instances to reduce yields greater than 90 percent.

9. Chlorpyrifos is used as part of an integrated pest management (IPM) system to control insect pests through multiple means (maintaining beneficial insects that are predators of aphids and mites; rotating different crop types to prevent insect pests from becoming established over multiple growing seasons; mixing and rotating insecticides with different modes of action to minimize resistance risks; etc.).

10. Growers regularly scout fields to avoid applying product unless pests reach economically-damaging levels. This reduces product use and applicator costs; preserves product efficacy (i.e. prevent pest populations from developing resistance to a pesticide); and minimizes pesticidal applications in the environment.

11. In South Dakota, we have a limited number of options for control of soybean aphids and spider mites. Removal of any of these options would result in a rapid buildup of insecticide resistance to the other remaining options. The loss of chlorpyrifos as a tool for controlling soybean aphids and spider mites would likely harm South Dakota's soybean harvest.

12. There is no one-to-one replacement for chlorpyrifos. Without the ability to use chlorpyrifos, soybean growers would need at least two alternative products to control common soybean pests, such as aphids and TSM. Aphid populations are increasingly developing resistance to other insecticides, meaning

growers already have fewer tools to rotate or mix to prevent populations becoming resistant to remaining tools.

13. The resistance to other pesticides is not theoretical. It has been documented across South Dakota. For instance, in South Dakota, soybean aphid resistance to Pyrethroids has been documented.

14. If growers have fewer tools to rotate and mix as a result of losing chlorpyrifos, the effectiveness of the remaining tools will erode more quickly as pest populations develop resistance.

15. During the ongoing disruptions in the supply chain, nearly all crop protection tools have increased in cost and decreased in supply. If growers lose access to chlorpyrifos, demand for these replacement tools will also increase, pushing costs up further and reducing available supplies.

16. Over time, if chlorpyrifos cannot be used, costs will increase and growers will experience greater crop yield losses as the number of available tools decreases as pests become resistant. 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.

17. The increase in use of other chemicals, along with the impacts to other species, including endangered species, will lead to increased scrutiny of these other

chemicals. Increased use will cause renewed scrutiny on these chemistries and a need for organizations such as ours to increase spending to defend what few tools are left.

18. We are also very concerned about what will happen if residues are detected on soybeans after the rule goes into full effect if growers do not possess retroactively-required channels of trade documents to prove applications were made legally (i.e., prior to the effective date of the revocation). Since soybeans are comingled commodities stored in large grain bins and at elevators, a detection could result in the loss of millions of dollars of soybeans or soy-based products at various points in the supply chain.

19. We are also concerned growers will have significant volumes of otherwise unusable existing stocks with no clear instructions for safe, responsible mass disposal. This could result in significant disposal costs for growers or environmental harms.

20. In the December 2020 chlorpyrifos Proposed Interim Registration Decision (PID). EPA, Chlorpyrifos, Proposed Interim Registration Review Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf). EPA identified 11 high-benefit agricultural uses that "the agency has determined will not pose potential

risks of concern with a Food Quality Protection Act (FQPA) safety factor of 10X and may be considered for retention." The PID is clear that these 11 agricultural uses meet the Federal Food Drug and Cosmetics Act safety standard when EPA evaluated the aggregate exposure for both food residues and drinking water concentrations.

21. Soybeans grown in South Dakota are one of the uses EPA determined was safe, even with the highly conservative 10x FQPA safety factor.

22. As EPA's own evaluation has shown, the South Dakota soybean industry can use chlorpyrifos to produce a nutritional crop in a safe manner.

23. SDSA does not support the discontinuation of chlorpyrifos on South Dakota soybean crops. EPA has ignored its own safety finding as EPA has shown that chlorpyrifos can be used with no risk of harm in the South Dakota soybean industry. The decision to revoke tolerances of chlorpyrifos will cause this industry irreparable harm.

24. On October 19, 2021, SDSA joined with 80 other agricultural stakeholders to file objections with EPA (Long Decl. Ex. P). In these objections we stated that the tolerance revocations applicable to the 11 crops which met the safety standard should not be revoked. South Dakota soybeans are one of these crops. EPA overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

25. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on South Dakota soybeans and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on South Dakota soybean crops, consistent with the uses already deemed safe by EPA.

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

Dated this 25th day of February, 2022.

Jerry Schmitz

EXHIBIT R

DECLARATION OF NANCY JOHNSON ON BEHALF OF PETITIONER ORTH DAKOTA SOYBEAN GROWERS ASSOCIATION ("NDSGA")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF NANCY JOHNSON ON BEHALF OF PETITIONER NORTH DAKOTA SOYBEAN GROWERS ASSOCIATION ("NDSGA")

I, Nancy Johnson, declare and state as follows:

1. I am the Executive Director of the North Dakota Soybean Growers Association ("NDSGA") and am authorized to make this declaration on behalf of NDSGA, based on my personal knowledge. I have worked on behalf of North Dakota's soybean farmers since 2013.

2. I have spent my entire career working in agriculture, including agricultural chemical, seed and fertilizer marketing, and as a partner on our family farm.

3. My responsibilities include carrying out the directives of the NDSGA Board of Directors and improving the profitability and representation for North Dakota Soybean farmers. The interests that NDSGA 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 NDSGA.

4. I have solicited and reviewed information from numerous growers and members of NDSGA regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on North Dakota soybeans, which is set to take effect on February 28, 2022, is not granted.

5. Located in Fargo, North Dakota, NDSGA is a statewide, not-for-profit, member-driven organization that was founded in 1983. NDSGA seeks to proactively improve the profitability and representation of all North Dakota Soybean Growers and to develop quality community leaders. NDSGA also conducts legislative activities in Bismarck and Washington, D.C. to improve the sustainable prosperity of its members and the entire soybean industry. We represent nearly 8,400 farms in North Dakota, encompassing approximately 7,000,000 soybean acres annually. In 2021, North Dakota harvested 181 million bushels of soybeans equating to over 10 billion pounds of soybeans.

6. Chlorpyrifos is widely used in North Dakota to manage a variety of pests in several important agricultural crops. In recent years, chlorpyrifos has been applied on approximately 25% of North Dakota's soybean acres each year.

7. In soybeans, chlorpyrifos is used to control several economically damaging insect pests, most notably soybean aphids and two-spotted spider mites (TSM). It is applied in a spray application to "knock down" aphids and mites already present on crops when pests reach economically damaging levels. It is very effective for these purposes.

8. If left uncontrolled, aphids and TSM can reduce soybean yields up to 40 and 60 percent, respectively. Aphid and TSM populations can flare and have a greater impact on yields in drought conditions, as many areas of North Dakota

experienced last growing season. Additionally, these pests can vector secondary viruses (e.g. soybean mosaic virus) which can result in double-digit yield losses and have been documented in rare instances to reduce yields greater than 90 percent.

9. Chlorpyrifos is used as part of an integrated pest management (IPM) system to control insect pests through multiple means (maintaining beneficial insects that are predators of aphids and mites; rotating different crop types to prevent insect pests from becoming established over multiple growing seasons; mixing and rotating insecticides with different modes of action to minimize resistance risks; etc.).

10. Growers regularly scout fields to avoid applying product unless pests reach economically damaging levels. This reduces product use and applicator costs; preserves product efficacy (i.e. prevent pest populations from developing resistance to a pesticide); and minimizes pesticidal applications in the environment.

11. In North Dakota, we have a limited number of options for control of soybean aphids and spider mites. Removal of any of these options would result in a rapid buildup of insecticide resistance to the other remaining options. The loss of chlorpyrifos as a tool for controlling soybean aphids and spider mites would likely harm North Dakota's soybean harvest.

12. There is no one-to-one replacement for chlorpyrifos. Without the ability to use chlorpyrifos, soybean growers would need at least two alternative products to control common soybean pests, such as aphids and TSM. Aphid populations are increasingly developing resistance to other insecticides, meaning growers already have fewer tools to rotate or mix to prevent populations becoming resistant to remaining tools.

13. The resistance to other pesticides is not theoretical. It has been documented across North Dakota. For instance, in North Dakota, soybean aphid resistance to Pyrethroids has been documented.

14. If growers have fewer tools to rotate and mix as a result of losing chlorpyrifos, the effectiveness of the remaining tools will erode more quickly as pest populations develop resistance.

15. During the ongoing disruptions in the supply chain, nearly all crop protection tools have increased in cost and decreased in supply. If growers lose access to chlorpyrifos, demand for these replacement tools will also increase, pushing costs up further and reducing available supplies.

16. Over time, if chlorpyrifos cannot be used, costs will increase and growers will experience greater crop yield losses as the number of available tools decreases as pests become resistant. 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.

17. The increase in use of other chemicals, along with the impacts to other species, including endangered species, will lead to increased scrutiny of these other chemicals. Increased use will cause renewed scrutiny on these chemistries and a need for organizations such as ours to increase spending to defend what few tools are left.

18. We are also very concerned about what will happen if residues are detected on soybeans after the rule goes into full effect if growers do not possess retroactively required channels of trade documents to prove applications were made legally (i.e., prior to the effective date of the revocation). Since soybeans are comingled commodities stored in large grain bins and at elevators, a detection could result in the loss of millions of dollars of soybeans or soy-based products at various points in the supply chain.

19. We are also concerned growers will have significant volumes of otherwise unusable existing stocks with no clear instructions for safe, responsible mass disposal. This could result in significant disposal costs for growers or environmental harms.

20. In the December 2020 chlorpyrifos Proposed Interim Registration Decision (PID), EPA, Chlorpyrifos, Proposed Interim Registration Review

Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf), EPA identified 11 high-benefit agricultural uses that "the agency has determined will not pose potential risks of concern with a Food Quality Protection Act (FQPA) safety factor of 10X and may be considered for retention." The PID is clear that these 11 agricultural uses meet the Federal Food Drug and Cosmetics Act safety standard when EPA evaluated the aggregate exposure for both food residues and drinking water concentrations.

21. Soybeans grown in North Dakota are one of the uses EPA determined was safe, even with the highly conservative 10x FQPA safety factor.

22. As EPA's own evaluation has shown, the North Dakota soybean industry can use chlorpyrifos to produce a nutritional crop in a safe manner.

23. NDSGA does not support the discontinuation of chlorpyrifos on North Dakota soybean crops. EPA has ignored its own safety finding as EPA has shown that chlorpyrifos can be used with no risk of harm in the North Dakota soybean industry. The decision to revoke tolerances of chlorpyrifos will cause this industry irreparable harm.

24. On October 19, 2021, NDSGA joined with 80 other agricultural stakeholders to file objections with EPA (Long Decl. Ex. P). In these objections we

stated that the tolerance revocations applicable to the 11 crops which met the safety standard should not be revoked. North Dakota soybeans are one of these crops. EPA overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

25. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on North Dakota soybeans and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on North Dakota soybean crops, consistent with the uses already deemed safe by EPA.

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

Dated this 24 day of February, 2022.

Nancy M. Johnson

Nancy M. Johnson

EXHIBIT S

DECLARATION OF BEN SCHOLZ ON BEHALF OF NATIONAL ASSOCIATION OF WHEAT GROWERS ("NAWG")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF BEN SCHOLZ ON BEHALF OF NATIONAL ASSOCIATION OF WHEAT GROWERS ("NAWG")

I, Ben Scholz, declare and state as follows:

1. I am the Past-President of the National Association of Wheat Growers ("NAWG") and am authorized to make this declaration on behalf of NAWG, based on my personal knowledge. I have held leadership positions with NAWG since 2017. In this capacity, I am responsible for ensuring that NAWG carries 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 grower-governed and grower-funded, and works in areas as diverse as federal farm policy, trade, environmental regulation, agricultural research, and sustainability. NAWG is a federation of 20 state wheat grower associations that works to represent the needs and interests of wheat producers before Congress, federal agencies and elsewhere. The interests that NAWG seeks 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 NAWG.

4. I have solicited and reviewed information from numerous growers and members of NAWG regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on winter and spring wheat, which is set to take effect on February 28, 2022, is not granted.

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 that wheat growers use 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 allows 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.

8. EPA's decision to revoke the tolerances for chlorpyrifos was flawed for multiple reasons. The Final Rule revoking the tolerances is inconsistent with

the Agency's own scientific record on chlorpyrifos with respect to the safety of certain uses, including use on winter and spring wheat. In fact, EPA turned a blind eye to scientific data and safety findings in its own 2020 Proposed Interim Decision for Chlorpyrifos, U.S. EPA, Proposed Interim Decision for Chlorpyrifos, EPA-HQ-OPP-2008-0850-0971, (Dec. 3, 2020) (hereinafter, "PID"), https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf, improperly canceling tolerance uses that the Administrator can and should leave in effect under the requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

9. The PID carefully considered 11 crop uses in specific regions and determined that those uses "will not pose potential risks of concern with an FQPA safety factor 10x." But even after reaffirming the PID's safety findings in the Final Rule, EPA simply refused to apply those findings when it determined to revoke the tolerances for the safe high-benefit crop uses, including winter and spring wheat. EPA clearly has the necessary data, the ability, and the authority to preserve the tolerances for these 11 high-benefit uses.

10. EPA's overbroad revocation upends decades of Agency-approved chlorpyrifos use, where EPA otherwise could lawfully and based on sound science leave in effect the tolerances for the 11 high-benefit crops—including winter and spring wheat.

11. In addition, when the EPA announced the action to cancel chlorpyrifos tolerances prior to altering the registration and product labels, it was done in a manner that is contrary to normal procedure under FIFRA and contrary to agency's own data under the registration review of chlorpyrifos.

12. Chlorpyrifos use on winter and spring wheat meets the EPA and FDA safety standards. To proceed with a revocation of chlorpyrifos outside the approved regulatory process, that allows for a transparent public input of data, comments and decision making, sets a dangerous precedent for other crop protection products. Growers rely on EPA and FDA to establish requirements for the safe use of crop protection products and the current regulatory framework provides for those reviews.

13. The agency action to terminate tolerances prior to altering the label uses of the product can cause market disruptions in the wheat supply chains. Wheat is often stored on farms or processed into flour and further to baked goods that can be stored anywhere along the supply chain, including in an individual's home. The food products can be on the shelf or in the freezer, resulting in different storage timelines that must be taken into consideration by the agencies when they address the future of products in the supply chain. Moreover, EPA's actions do not allow sufficient time for supplies to move through the channels of trade for both food and animal feed.

14. NAWG objects to the discontinuation of the 11 high-benefit chlorpyrifos uses and joined with 80 other agricultural stakeholders in a joint objection filed on October 19, 2021 (Long Decl. Ex. P). NAWG also filed comments with EPA on October 28, 2021 (Long Decl. Ex. T) stating additional concerns with the EPA Final Rule. EPA overruled NAWG's objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

15. The decision to revoke tolerances of chlorpyrifos will negatively impact wheat growers farmers and the food supply. EPA should follow its own science, modify the applicable registrations consistent with EPA's previous scientific findings, and allow the continued safe use of chlorpyrifos on the eleven high benefit agricultural crops, including winter and spring wheat.

16. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on the eleven high-benefit agricultural crops, including winter and spring wheat, and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on the eleven high-benefit agricultural crops, including winter and spring wheat, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.

Ben Scholz

EXHIBIT T

DECLARATION OF KYLE HARRIS ON BEHALF OF PETITIONER CHERRY MARKETING INSTITUTE ("CMI")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

DECLARATION OF KYLE HARRIS ON BEHALF OF PETITIONER CHERRY MARKETING INSTITUTE ("CMI")

I, Kyle Harris, declare and state as follows:

1. I am the Director of Grower Relations at the Cherry Marketing Institute ("CMI"). I have held this position since January 2020. In this capacity, I oversee grower relations, marketing, research and government relations.

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 include addressing grower concerns, working on maximum residue limits (MRLs) and pest management issues, facilitate production research and yearly industry priority meetings, publish industry statistics book, meet with state and federal officials, work with USDA's Risk Management Agency on sweet and tart cherry crop insurance policies, and assist with promotion, marketing, and research for U.S. tart cherries and Michigan sweet cherries.

4. I earned a Bachelor of Arts degree from Saginaw Valley State University and am a candidate for a Masters of Public Administration. I have been employed in the Michigan Legislature for almost 10 years and have also been an elected official in county government.

5. I have solicited and reviewed information from numerous growers and members of CMI regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on tart cherries, which is set to take effect on February 28, 2022, is not granted.

6. 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 333 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.

7. 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 this past year. Michigan produces about 70-75% of the total U.S. production and ranks number four in sweet cherry production. Chlorpyrifos is one of the most effective tools in the cherry growers' toolbox.

8. Chlorpyrifos is used on almost all of our cherry tree acres as it is uniquely effective. EPA's decision to revoke tolerances for chlorpyrifos takes

away critically needed crop protection for which there is no equal replacement. This decision will cause irreparable harm to cherry growers and the economy.

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 the pest management toolbox.

10. Chlorpyrifos is the only effective chemistry the industry has to protect from trunk borers, and if our industry could not 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 active on adult, 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 (Long Decl. Ex. E). 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.msu.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. 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.

14. The economic impact of losing these 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.

15. In 2020, EPA reviewed 11 different geographical regions and the crops grown there, determining that if a prescribed set of parameters are followed, the amount of residue would be below levels of concern [Bohaty, Ph.D., Rochelle et. al, Memorandum: Updated Chlorpyrifos Refined Drinking Water Assessment for Registration Review, September 15, 2020, https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0941]. (Hereinafter "Updated Assessment", Long Decl. Ex. D). The Michigan tart cherry

industry is one of those 11 industries that EPA has determined to receive a "high-benefit" from the use of Chlorpyrifos and does not pose a dietary risk.

16. In its revocation Final Rule, EPA stated: "Considering food exposure alone, the Agency did not identify risks of concern for either acute or steady state exposure." [Final Rule]. The Michigan tart cherry industry uses this high-benefit chemistry as a trunk spray to treat for greater peachtree borer, lesser peachtree borer, and American plum borer control where the "high benefit signifies that there are no alternative pesticides available or the alternatives are expensive or not as efficacious for a pest on a specific crop." (Updated Assessment).

17. As EPA's own evaluation has shown, the Michigan tart cherry industry can use chlorpyrifos to produce a nutritional crop in a safe manner. It has been proven by EPA's drinking water assessment and a dietary assessment that our industry's use meets Federal Food, Drug, and Cosmetic Act safety standards.

18. CMI does not support the discontinuation of chlorpyrifos on tart cherries and has filed objections with EPA on October 18, 2021 (Long Decl. Ex. U), and on October 29, 2021 CMI requested an evidentiary hearing with EPA (Long Decl. Ex. V). EPA overruled CMI's objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

19. EPA revoking the tolerances for use of chlorpyrifos in the Michigan tart cherry industry due to a dietary risk of concern is factually inaccurate, based on EPA's own findings. EPA has shown that chlorpyrifos can be used with no risk of harm in the Michigan tart cherry industry. The decision to revoke tolerances of chlorpyrifos will cause this industry irreparable harm.

20. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on Michigan tart cherries and success on the merits of the petition would fully redress the harms above by allowing continued use chlorpyrifos on Michigan tart cherries, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.

Kyle Harris

EXHIBIT U

DECLARATION OF MICHAEL AERTS ON BEHALF OF PETITIONER FLORIDA FRUIT AND VEGETABLE ASSOCIATION ("FFVA")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF MICHAEL AERTS ON BEHALF OF PETITIONER FLORIDA FRUIT AND VEGETABLE ASSOCIATION ("FFVA")

I, Michael Aerts, declare and 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 declaration 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 revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on Florida citrus, which is set to take effect on February 28, 2022, is not granted.

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 $6.7 billion to the state and supported more than 33,300 jobs during the 2019-20 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. USDA in 2019 reported that citrus production overall in Florida has decreased by more than 74 percent since the introduction of the Asian citrus psyllid and subsequent HLB infections this pest transmits.

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, Long Decl. Exs. W and X respectively); 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, Long Decl. Ex. Y). At the height of the state's orange production, Florida was producing 244 million boxes of oranges a year (Florida NASS 1998 Citrus July Forecast, Long Decl. Ex. Z). The most recent crop forecast by the USDA projects that Florida will produce only 44.5 million boxes of oranges in 2022 (USDA NASS January 12, 2022 Citrus Forecast, Long Decl. Ex. AA). A total of 387,000 acres of Florida citrus was harvested in 2019 (Florida Agriculture & Natural Resource Facts, UF/IFAS Economic Impact Analysis Program – 2019, Long Decl. Ex. BB) whereas as recent as 1996, 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, Long Decl. Ex. CC).

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.

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 rely 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. All of these aforementioned pests are targeted directly and managed effectively by the application of chlorpyrifos.

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

14. Restricting 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. In 2020, EPA reviewed 11 different geographical regions and the crops grown there, determining that if a prescribed set of parameters are followed, the amount of chlorpyrifos residue would below levels of concern [Bohaty, Ph.D., Rochelle et. al, Memorandum: Updated Chlorpyrifos Refined Drinking Water Assessment for Registration Review, September 15, 2020, https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0941]. The Florida citrus industry is one of those 11 industries that EPA has determined to receive a "high benefit" from the use of chlorpyrifos and does not pose a dietary risk.

16. As EPA's own evaluation has shown, the Florida citrus industry can use chlorpyrifos to produce a nutritional crop in a safe manner. It has been proven by EPA's drinking water assessment and by EPA's dietary assessment that our industry's use meets Federal Food, Drug, and Cosmetic Act safety standards.

17. FFVA does not support the discontinuation of chlorpyrifos on Florida citrus. EPA has ignored its own safety finding as EPA has shown that chlorpyrifos

can be used with no risk of harm in the Florida citrus industry. The decision to revoke tolerances of chlorpyrifos will cause this industry irreparable harm.

18. On October 29, 2021, we were part of an organization, the Minor Crop Farmer Alliance, that filed objections with EPA (Long Decl. Ex. DD). In these objections we stated that the tolerance revocations applicable to the 11 crops which met the safety standard should not be revoked. Florida citrus is one of these crops. EPA overruled these objections to the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

19. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on Florida citrus and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on Florida citrus crops, consistent with the uses already deemed safe by EPA.

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

Dated this 24th day of February, 2022.

Michael Aerts

EXHIBIT V

DECLARATION OF CHRIS BUTTS ON BEHALF OF PETITIONER GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION ("GFVGA")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF CHRIS BUTTS ON BEHALF OF PETITIONER GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION ("GFVGA")

I, Chris Butts, declare and 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 declaration 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. The interests that GFVGA seeks 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 GFGVA.

4. I have solicited and reviewed information from numerous growers and members of GFVGA regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on Georgia fruit and vegetables, including apples and peaches, which is set to take effect on February 28, 2022, is not granted.

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. 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.

7. In 2020, EPA reviewed 11 different geographical regions and the crops grown there, determining that if a prescribed set of parameters are followed, the amount of chlorpyrifos residue would below levels of concern [Bohaty, Ph.D., Rochelle et. al, Memorandum: Updated Chlorpyrifos Refined Drinking Water Assessment for Registration Review, September 15, 2020, https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0941]. Apples, and peaches grown in Georgia were included in the list of those 11 crops that EPA has determined to receive a "high-benefit" from the use of chlorpyrifos and does not pose a risk.

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

by EPA's drinking water assessment and by EPA's dietary assessment that our industry's use meets Federal Food, Drug, and Cosmetic Act safety standards.

9. Our peach growers in Georgia use chlorpyrifos in the pre-bloom stage or post-harvest. Use on peaches is limited to one application per year. Chlorpyrifos is particularly effective at treating scale and borers. Chlorpyrifos is never applied when there is fruit on the tree.

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.

12. Our apple growers in Georgia also rely on chlorpyrifos. With one application per year while the apple tree is a dormant pre-bloom stage, chlorpyrifos is an important tool for the control of scale, stink bugs, aphids and borers in apple production. Without chlorpyrifos, yield loss, excessive production cost increases and application timing will be a concern for our apple crops.

13. Georgia farmers rely 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.

14. Eliminating the use of chlorpyrifos 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. GFVGA does not support the discontinuation of chlorpyrifos on Georgia peaches and apples. EPA has ignored its own safety finding as EPA has shown that chlorpyrifos can be used with no risk of harm on these Georgia crops. The decision to revoke tolerances of chlorpyrifos will cause these industries irreparable harm.

16. On October 19, 2021, GFVGA joined with 80 other agricultural stakeholders to file objections with EPA (Long Decl. Ex. P). In these objections we stated that the tolerance revocations applicable to the 11 high-benefit crops which met the safety standard should not be revoked. Georgia apples and peaches are included in this group of 11 high-benefit crops. EPA overruled these objections to

the Final Rule on February 22, 2022. As a result, absent a partial stay, the harmful effects of the Final Rule are now certain.

17. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on the 11 high-benefit uses identified by EPA, including Georgia apple and peach crops, and success on the merits of the petition would fully redress the harms above by allowing continued use of chlorpyrifos on these crops, consistent with the uses already deemed safe by EPA.

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

Dated this 25th day of February, 2022.

Chris Butts

Chris Butts

EXHIBIT W

DECLARATION OF STEVE HENSLEY IN SUPPORT OF PETITIONER NATIONAL COTTON COUNCIL OF AMERICA ("NCC")

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

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; CHERRY MARKETING INSTITUTE; FLORIDA FRUIT AND VEGETABLE ASSOCIATION; GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL OF AMERICA; AND GHARDA CHEMICALS INTERNATIONAL, INC.,

Petitioners,

v.

MICHAEL S. REGAN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

DECLARATION OF STEVE HENSLEY IN SUPPORT OF PETITIONER NATIONAL COTTON COUNCIL OF AMERICA ("NCC")

I, Steve Hensley, declare and state as follows:

1. I am the Senior Scientist for Regulatory and Environmental Issues at the National Cotton Council of America ("NCC"). I have held this position since August 2016. In this capacity, I oversee all regulatory activities regarding environment, transportation, and occupational safety regulations on behalf of NCC.

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

3. My responsibilities include ensuring that our seven industry sectors achieve reasonable and scientifically based government regulations and policies.

4. I have spent my career working on regulatory policy issues and I have been working specifically on agricultural issues for over 20 years.

5. I have solicited and reviewed information from numerous growers and members of NCC regarding the consequences of revoking the tolerances for chlorpyrifos. This declaration explains the adverse impact that will result if the petitioners' motion to stay the Final Rule related to the revocation of tolerances for chlorpyrifos use on cotton, which is set to take effect on February 28, 2022, is not granted.

6. NCC represents 16,000 cotton farms across the country as well as all seven raw cotton industry segments: producers who grow the fiber; cottonseed

processors and merchandisers; ginners who separate the fiber from the seed; cooperatives who process, handle or market cotton or cottonseed for their producer members; warehousemen who store the baled cotton; merchants who market the fiber; and manufacturers who convert the fiber into yarn and fabric.

7. NCC's mission is to strengthen the industry's ability to compete effectively and profitably in fiber and oilseed markets at home and abroad. NCC represents the U.S. raw cotton industry's central organization whose commodity is valued at more than $120 billion annually to the nation's economy. The industry's continuing strength means jobs for more than 340,000 persons employed in the cotton industry and millions more in the allied industries that provide machinery, crop protection chemicals, fuels, financing and other products and services.

8. Over 10 million acres of cotton are harvested each year. Chlorpyrifos is one of the more effective tools in the cotton growers' toolbox. Alternatives are not as effective against all pests and are more expensive.

9. Chlorpyrifos is particularly important to control Whitefly and late season cotton aphid infestations. EPA's decision to revoke tolerances for chlorpyrifos takes away a critically needed crop protection tool. This decision will cause irreparable harm to cotton growers and the economy.

10. If Whitefly and late season cotton aphid infestations are not controlled, the sugars they excrete (often referred to as honeydew) will impact the entire cotton chain. The sugar excretions lead to "sticky cotton" and "sticky lint."

11. Sticky cotton leads to yield losses, slows the ginning process by up to 25%, and will lower the grade and value of the cotton ($0.03/pound - $0.05/pound). (Ellsworth et al. 1999, The University of Arizona, Cooperative Extension IPM Series No. 13, Sticky Cotton Sources & Solutions, Long Decl. Ex. EE). Sticky cotton also makes spinning fibers more difficult, requiring frequent shutdown of processing equipment to clean gumming of sugars, and potential reduction in final product due to staining and fiber grade.

12. Over time, if chlorpyrifos cannot be used, costs will increase and growers will experience greater crop yield losses as the number of available tools decreases as pests become resistant to remaining tools. 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.

13. We are also very concerned about what will happen if residues are detected on cotton after the rule goes into full effect if growers do not possess retroactively-required channels of trade documents to prove applications were made legally (i.e., prior to the effective date of the revocation).

14. EPA's Benefits Analysis, 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, notes that "sticky or discolored lint can result in entire fields' harvests becoming unsaleable not only in the pest-heavy year but in subsequent years, because cotton mills could refuse to buy from that area again (UC IPM 2015)."

15. In the December 2020 chlorpyrifos Proposed Interim Registration Decision (PID). EPA, Chlorpyrifos, Proposed Interim Registration Review Decision, Case No. 0100 (December 2020) (https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf). EPA identified 11 high-benefit agricultural uses that "the agency has determined will not pose potential risks of concern with a Food Quality Protection Act (FQPA) safety factor of 10X and may be considered for retention." The PID is clear that these 11 agricultural uses meet the Federal Food Drug and Cosmetics Act safety standard when EPA evaluated the aggregate exposure for both food residues and drinking water concentrations.

16. Cotton grown in six states (Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia), is one of the uses EPA determined was

safe, even with the highly conservative 10x FQPA safety factor. It has been proven by EPA's drinking water assessment and a dietary assessment that our industry's use meets Federal Food, Drug, and Cosmetic Act safety standards.

17. EPA's overbroad revocation upends decades of Agency-approved chlorpyrifos use, where EPA otherwise could lawfully and based on sound science leave in effect the tolerances for the 11 high-benefit crops—including cotton in six states. On average, 2.5 to 3 million acres of cotton are grown by over 6,000 farms in these states.

18. In addition, when the EPA announced the action to cancel chlorpyrifos tolerances prior to altering the registration and product labels, it was done in a manner that is contrary to normal procedure under FIFRA and contrary to the agency's own data under the registration review of chlorpyrifos.

19. NCC does not support the discontinuation of chlorpyrifos on cotton. EPA revoking the tolerances for use of chlorpyrifos on cotton due to a dietary risk of concern is factually inaccurate, based on EPA's own findings. EPA has shown that chlorpyrifos can be used with no risk of harm in the cotton industry in six states. The decision to revoke tolerances of chlorpyrifos will cause this industry irreparable harm.

20. A stay of the Final Rule related to the expiration of tolerances for chlorpyrifos use on cotton and success on the merits of the petition would fully

redress the harms above by allowing continued use chlorpyrifos on cotton, consistent with the uses already deemed safe by EPA.

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

Dated this 4th day of February, 2022.

Steve Hensley

EXHIBIT 23

Consolidated Case Nos. 22-1422, 22-1530

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RED RIVER VALLEY SUGARBEET GROWERS ASSOCIATION, *et al.*,

Petitioners,

v.

MICHAEL REGAN, *et al.*,

Respondents.

On Petition for Review from the
United States Environmental Protection Agency

AMICUS CURIAE BRIEF OF THE STATE OF NORTH DAKOTA IN SUPPORT OF PETITIONERS

STATE OF NORTH DAKOTA

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GLOSSARY OF TERMS

Denial Order	Chlorpyrifos; Final Order Denying Objections, Requests for Hearings, and Requests for a Stay of the August 2021 Tolerance Final Rule, 87 Fed. Reg. 11,222 (Feb. 28, 2022)
EPA	United States Environmental Protection Agency
FFDCA	Federal Food, Drug, and Cosmetic Act
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
Final Rule	"Chlorpyrifos; Tolerance Revocations," 86 Fed. Reg. 48,315 (Aug. 30, 2021)
PID	Proposed Interim Decision for Chlorpyrifos (December 3, 2020)

THE IDENTIFY AND INTEREST OF *AMICUS CURIAE* THE STATE OF NORTH DAKOTA

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), the State of North Dakota ("North Dakota" or "State") submits this brief *amicus curiae* in support of Petitioners 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, Cherry Marketing Institute, Florida Fruit and Vegetable Association, Georgia Fruit and Vegetable Growers Association, National Cotton Council of America, and Gharda Chemicals International, Inc. (hereinafter "Petitioners").

North Dakota writes in support of Petitioners' challenge to EPA's final rule entitled "Chlorpyrifos; Tolerance Revocations," 86 Fed. Reg. 48,315 (Aug. 30, 2021) ("Final Rule") (AR 1; Pet. Add. 1) and Petitioners' challenge of EPA's denial of their objections to objections to the Final

Rule in EPA's final decision entitled Chlorpyrifos; Final Order Denying Objections, Requests for Hearings, and Requests for a Stay of the August 2021 Tolerance Final Rule, 87 Fed. Reg. 11,222 (Feb. 28, 2022) ("Denial Order") (Pet. Add. 23).

Agricultural Production is Immensely Important to North Dakota:

Since its statehood in 1889 to the present, agriculture has played a central economic and social role in North Dakota. Agriculture comprises over 25% of the state's total economy and generates some eight billion dollars in cash receipts each year. In North Dakota, the average farm or ranch operation comprises approximately 1500 acres. North Dakota has roughly 26,000 farms and ranches comprising nearly 39.3 million acres. Nearly ninety percent of the total land area in North Dakota is devoted to farming and ranching. These many millions of acres of farmlands and ranchlands provide food and habitat for well over 75% of the wildlife in North Dakota.

North Dakota agriculture remains the leading industry in North Dakota. North Dakota agriculture contributes considerably over 30 billion dollars in economic activity annually to the state. Agriculture broadly supports nearly twenty-five percent of the state's workforce,

which is higher than the national average of nineteen percent. North Dakota is the nation's 9th largest agricultural exporting state, shipping $4.5 billion in agricultural commodities and products abroad in 2017. *See* U.S. Dept. of Agriculture ("USDA"), North Dakota Trade Facts; available at https://ustr.gov/map/state-benefits/nd. Amber waves of grain – hard red spring wheat, durum, and barley – have long been the mainstay of the North Dakota's economy.

In 2020, North Dakota led the nation in the production of 11 different commodities (dry edible beans, pinto beans, canola, flaxseed, honey, rye, all sunflower, non-oil sunflower, oil sunflower, all wheat (durum wheat, and spring wheat)). North Dakota Agricultural Statistics 2021, at 7, Compiled by USDA, National Agricultural Statistics Service, North Plains Region (available at https://www.nass.usda.gov/Statistics_by_State/North_Dakota/Publications/Annual_Statistical_Bulletin/index.php). North Dakota also ranked second in the production of black beans, navy beans, pink beans, small red beans, lentils, and dry edible peas, and third in the production of sugarbeets, cranberry beans, and barley. *Id.* at 10. North Dakota is also

a hotbed for emerging crops like industrial hemp, hops, fava beans, and carinata.

North Dakota has a Codified Interest in Promoting Safe and Sustainable Agricultural Production:

North Dakota's legislature has codified the State's interest in supporting and promoting a safe, sustainable, and productive agricultural sector. North Dakota's Agriculture Commissioner "shall call a meeting of representatives from each [agricultural] commodity group to engage in collaborative efforts to promote and market agricultural commodities." N.D. Cent. Code § 4.1-01-12(2). North Dakota's Agriculture Commissioner is also directed to "implement a program to promote agricultural commodities sustainably grown in North Dakota." N.D. Cent. Code § 4.1-01-10(1). In this context, sustainably grown means research-based practices resulting in "[d]ecreased reliance on tillage and other soil-depleting practices," "[i]ncreased efficiencies in the use of other necessary and measurable agricultural inputs," "[i]ncreased yield efficiencies," and "[g]reater economic benefit to producers." *Id.* at (6)(a)-(f).

North Dakota also fosters the sustainable development of its agricultural commodities through the responsible use of pesticides.

North Dakota's Pesticide Control Board oversees the "safe handling, transportation, storage, display, distribution, and disposal of pesticides and pesticides" in compliance with federal law. N.D. Cent. Code § 4.1-33-03(5)(b). To effectuate its mandate, North Dakota's Pesticide Control Board has adopted substantial regulations governing the safe and effective distribution, handling, disposal, and use of pesticides. *See* North Dakota Admin. Code, Articles 60-01 through 60-03. This mandate will now include managing the disposal of significant amounts of chlorpyrifos "stranded" as a result of EPA's arbitrary and capricious revocation of chlorpyrifos tolerances.

North Dakota's Interest in the Continued Use of Chlorpyrifos:

North Dakota's agricultural sector, in partnership with the State's regulators, has long utilized chlorpyrifos in a safe and effective manner. The majority of the crops grown in North Dakota rely significantly on the safe use of chlorpyrifos. The main uses of chlorpyrifos in North Dakota are for crop production of sunflowers, sugar beets, and soybeans. Chlorpyrifos is also used, albeit to a lesser degree, for crop production of wheat, corn, alfalfa, dry beans, chickpeas, and lentils.

Due to North Dakota's significant reliance on the safe and effective use of chlorpyrifos, North Dakota has followed and participated in EPA's rulemakings governing chlorpyrifos. For example, North Dakota participated in EPA's efforts to review the current science and update its tolerance determinations for chlorpyrifos, including EPA's Chlorpyrifos Proposed Interim Registration Review Decision (Dec. 2020) ("PID") (AR 40; Pet. App. 366), that in late 2020 found the key uses of chlorpyrifos in North Dakota to be safe. *See* North Dakota Department of Agriculture Comments on Proposed Interim Decision for Chlorpyrifos (Document No. EPA-HQ-OPP-2008-0850-1068) (March 5, 2021).

Similarly, multiple North Dakota trade associations, with which the North Dakota Department of Agriculture works closely, commented on the PID and joined objections to the Final Rule. *See e.g.* Objections submitted by Agricultural Retailers Association et al. (Document No. EPA-HQ-OPP-2021-0523-0001) (Joined by the North Dakota Corn, Grain, and Soybean Growers Associations); Northern Pulse Growers Association Comments on the Proposed Interim Decision for Chlorpyrifos (Document No. EPA-HQ-OPP-2008-0850-1060) (March 2, 2021).

Thus, North Dakota has an intimate familiarity with chlorpyrifos, the science behind its use, and the real-world impact that EPA's recent revocation of chlorpyrifos tolerances will cause to North Dakota's and the nation's agricultural sector, as well as the United States' continued ability to feed the world in the face of growing food shortages.

EPA's Chlorpyrifos Ban Directly Affects North Dakota's Interest in Promoting Sustainable Agricultural Production:

North Dakota's codified interests in the promotion of agriculture are threatened by EPA's August 2021 decision in the Final Rule to ban all chlorpyrifos uses, which was a sudden and unexplained reversal of the December 2020 PID in which EPA had just unequivocally determined that chlorpyrifos had at least 11 safe uses. *See* PID, AR 40 at 40; Pet. App. 405 (discussing "the high-benefit agricultural uses that the agency has determined will not pose potential risks of concerns with an FQPA safety factor of 10X").

For example, EPA's arbitrary and capricious Final Rule threatens North Dakota's codified interest in "[d]ecreased reliance on tillage and other soil-depleting practices," because alternative pesticides and crop management controls lack the efficacy and affordability that chlorpyrifos readily provides. North Dakota farmers are already facing rapidly

escalating input costs and logistical bottlenecks due to well-publicized supply chain constraints, including those related to the Russian invasion of Ukraine. Without chlorpyrifos, many North Dakota farmers will face additional significant challenges in meeting buyer standards and implementing conservation techniques. For example, some farmers who practice conservation tilling methods will be compelled to till ahead of planting season for weed and pest control, because conservation tilling is ineffective without efficiently coupling it with pesticide use due to increased pest counts in untilled soil.

North Dakota thus has a substantial interest in the outcome of Petitioners' challenge to the Final Rule, and EPA's denial of Petitioners objections to the Final Rule in the Denial Order. Based on North Dakota's substantial agricultural interests at stake, North Dakota's long history of regulating North Dakota's agricultural sector for the safe and effective application of chlorpyrifos, and the State's many years of participating in EPA's rulemaking relating to chlorpyrifos, North Dakota has a strong well-established interest in this case and the resolution of the challenge to EPA's Final Rule.

SUMMARY OF ARGUMENT

The Court should grant Petitioners' requested relief and vacate the Final Rule as arbitrarily and capriciously promulgated. North Dakota has a serious clear-cut reliance interest in the continued safe use of chlorpyrifos, which EPA arbitrarily and capriciously cast aside when it completely changed course from decades of allowing the safe use of chlorpyrifos, including its unexplained about-face from the Agency's December 2020 PID finding that at least 11 uses of chlorpyrifos met the applicable safety factor. The Court should specifically vacate the Final Rule's revocation of all existing chlorpyrifos tolerances until such time as EPA can incorporate its unequivocal conclusions in the PID that existing tolerances for chlorpyrifos are safe in a new final agency rule.

Real and substantial harms will fall on North Dakota's, and the Nation's, agricultural sectors if the arbitrary and capricious Final Rule is affirmed. North Dakota's growers will be left stranded with insufficient and inferior alternatives to chlorpyrifos treatments for crops, and significant harm will befall North Dakota, its growers, the nation's, and indeed, the world's citizens who regularly depend on the safe crops grown in North Dakota and distributed around the Nation and world.

Further, significant stores of chlorpyrifos will be left unusable, creating a considerable disposal burden on North Dakota in contravention of EPA's obligations to coordinate its tolerance actions under the Federal Food, Drug, and Cosmetic Act ("FFDCA") with cancellation actions under FIFRA.

ARGUMENT

I. The Final Rule Is Arbitrary And Capricious Based On EPA's Complete Reversal Of The PID.

North Dakota joins Petitioners' Opening Brief in whole, and specifically in Petitioners' arguments that the Final Rule is arbitrary and capricious based on EPA's decision to revoke all tolerances – including 11 high-benefit crop uses that it previously determined in its PID to be safe (which encompass six approved used in North Dakota: alfalfa, soybean, sugarbeet, strawberry, and wheat (spring and winter)). Pet. Br. 42-60. The PID carefully considered these 11 crop uses in specific regions and then scientifically determined that those uses "will not pose potential risks of concern with an FQPA safety factor 10x." Pet. Br. at 25; AR at 40; Pet. App. 405.

Even after reaffirming the PID's safety findings in the Final Rule (*see* AR 2 at 5; Pet. App. 161), EPA nonetheless arbitrarily and without

adequate justification refused to apply those findings when EPA inexplicably revoked the tolerances for the 11 safe high-benefit crop uses. EPA clearly has the necessary data, the ability, and the authority to preserve the tolerances for these uses it has determined are safe. Not leaving the tolerances in effect for these 11 uses when EPA's own administrative record supports doing so is arbitrary and capricious.

North Dakota also joins Petitioners in their arguments that EPA's Final Rule and Denial Order is arbitrary and capricious due to their patent inconsistency with FIFRA's pesticide registration cancellation requirements. Pet. Br. 42-53. EPA's failure to properly coordinate the Final Rule and Denial Order with FIFRA's pesticide registration cancellations leaves North Dakota with large stocks of "stranded" chlorpyrifos that were compiled in anticipation of continued use, creating great disposal burdens for North Dakota under FIFRA.

EPA's arbitrary and capricious reversal from its science-based PID findings, and the prior 15 years established safe tolerances for chlorpyrifos, adversely impacts North Dakota's several significant material reliance interests. It is well established that an Agency must provide a legitimate and more detailed justification when "its new policy

rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

When serious reliance interests are at issue, "in order to offer a satisfactory explanation for its action, including a rational connection between the facts found and the choice made, the agency must give a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Mingo Logan Coal Company v. EPA*, 829 F.3d 710, 719 (2016) (internal quotations omitted) (citing to *Motor Vehicle Manufacturers Assoc. of the United States, Inc. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *F.C.C.*, 556 U.S. at 516).

Here, EPA arbitrarily and capriciously reversed course from its factual scientific findings contained in the PID, including that there were 11 safe crop uses for chlorpyrifos. And, to be sure, this reversal did not come in a vacuum. The procedural history for this case (*see* Pet. Br. at 7-31) outlines how the EPA finalized its safety finding in July of 2006, stating that chlorpyrifos tolerances "meet the safety standard under

Section 408(b)(2) of the FFDCA.[1] For over a decade and a half North Dakota, and its agricultural industry, reasonably relied on that well-established science-based finding.

In 2020 EPA's PID scientifically once again confirmed that chlorpyrifos tolerances remained safe for 11 specific crop uses. EPA gave no indication to North Dakota, and its growers, that there was any imminent risk that the plug would be pulled on all chlorpyrifos uses, especially in light of these well-founded 2006 and 2020 safety determinations. And, as Petitioners note, EPA was in months-long negotiations with Gharda to modify the approved uses on the label consistent with its safety finding in the 2020 PID (Pet. Br. 34-35), and North Dakota also received no indication from Gharda that chlorpyrifos use was at risk for the 11 crop uses identified in the PID.

Nor did the Ninth Circuit's *LULAC* decision cast doubt on EPA's safety findings for chlorpyrifos tolerances in the PID. *LULAC v. Wheeler*,

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[1] AR 33; Pet. App. 547; EPA, Office of Prevention, Pesticides and Toxic Substances, Memo to Jim Jones from Debra Edwards, Finalization of Interim Reregistration Eligibility Decisions and Interim Tolerance Reassessment and Risk Management Decisions for the Organophosphate Pesticides, and Completion of the Tolerance Reassessment and Reregistration Eligibility Process for the Organophosphate Pesticides 2 (July 31, 2006).

996 F.3d 673 (9th Cir. 2021) ("*LULAC*"). Instead, in *LULAC* the Ninth Circuit simply ordered EPA to issue a final regulation "that either revokes all chlorpyrifos tolerances or *modifies* chlorpyrifos tolerances." *Id.* at 703 (emphasis added). And in issuing that order, the Ninth Circuit explicitly acknowledged that the PID (and its safety findings for chlorpyrifos) were not before the court, and noted that "[i]f, 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.*

Therefore North Dakota, the North Dakota Department of Agriculture, and the State's growers reasonably relied upon the almost two decades of prior scientific review by EPA, culminating in the PID, which continually concluded that chlorpyrifos tolerances remained safe for use on crops. They did so in preparation for the 2022 growing season, without the ability to change crop rotation practices (such as no till approaches) or the knowledge it was necessary to do so in light of the fact that their most effective pesticide in chlorpyrifos would be banned overnight.

EPA's arbitrary and capricious reversal of the PID in the Final Rule impacted significant and legitimate long-standing reliance interests existing in the North Dakota and its agricultural sector (*See* Section II, *infra*), for which EPA fairly owed North Dakota a "reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior" chlorpyrifos tolerance safety findings in the PID. *Mingo Logan Coal Company*, 829 F.3d at 719. EPA failed to provide such a heightened justification supporting its recent direct about-face change in its treatment of Chlorpyrifos.

II. If The Final Rule Is Allowed To Stay In Effect, There Will Be Severe Consequences For Agriculture In North Dakota And The United States.

If the Court allows the Final Rule to stand, there will be severe effects for North Dakota's (and the Nation's) agricultural industry, extending to the global food supply chain as well. These adverse effects are not just economic, but also threaten environmental harm that should be considered in reviewing EPA's abrupt reversal of prior positions in the Final Rule. These harms are compounded by EPA's sudden and inadequately explained reversal from the PID issued in December of 2020 in which EPA determined there were 11 safe crop uses for chlorpyrifos.

States and growers reasonably relied on the PID to plan for effective crop management – and States and growers have not had time to adjust to EPA's drastic reversal in prohibiting the 11 safe uses of chlorpyrifos. Even EPA acknowledged in its PID that states such as California, Hawaii, New York, Maryland, and Oregon took the measured approach of "state-level actions to phase out all or most uses of chlorpyrifos" rather than initiate immediate bans of the pesticide. PID, AR at 50; Pet. App. at 376. It is thus confounding that EPA would immediately ban all uses of chlorpyrifos in the Final Rule without, at a bare minimum, providing pesticide distributors, applicators and agriculture producers a reasonable and meaningful phase out period.

A. North Dakota's Agricultural Industry (And The Nation's) Will Be Injured.

By EPA's own estimates, the per acre benefits of chlorpyrifos could be as high as $500 in parts of North Dakota, leading to Agency-estimated high-end benefits over $30 million overall nationwide. PID, AR at 81; Pet. App. at 407. The benefit of chlorpyrifos in soybean crops alone was estimated up to $4 per acre, and with over 3 million acres treated annually, the total benefit could be about $12 million nationwide. *Id.* For wheat and alfalfa, benefits were estimated at $1 per acre, but the agency

noted those costs would likely increase given their large production acreage, and EPA thus "estimated high per-acre economic benefits to growers." *Id.* EPA also acknowledges the lack of alternatives leading to potential yield loss in sugarbeet crops in Minnesota and North Dakota.[2] Losing chlorpyrifos as a critical agricultural tool in North Dakota would thus be devastating to its agricultural sector.

According to the USDA, the counties in eastern North Dakota collectively plant between 200,000 – 230,000 acres of sugarbeets annually, producing between 5.5-6.5 million tons of sugarbeets. *See* Sugar and Sweetener Yearbook Tables, U.S. sugar crop production and sugar production deliveries, and stocks, May 19, 2022, ERS/USDA (available at https://www.ers.usda.gov/data-products/sugar-and-sweeteners-yearbook-tables.aspx). This represents generally about 18% of total U.S. sugarbeet acreage.

According to a North Dakota State University study on the economic contribution of the sugarbeet industry in North Dakota, in 2010 the total direct impacts in North Dakota from sugarbeets were estimated

[2] AR 62; Pet. App. 299 (EPA, Memorandum, Revised Benefits of Agricultural Uses of Chlorpyrifos (PC# 059101), EPA-HQ-OPP-2008-0850-0969, at 5 (Nov. 18, 2020)).

at $592.3 million dollars. Economic Contribution of the Sugarbeet Industry in Minnesota and North Dakota, at 10 (AAE Report No. 688, February 2012) (available at https://www.ndsu.edu/agecon/research/research_reports/). This represents $36.8 million in collected taxes in the State. *Id.* 17. Sugarbeet production in both North Dakota and Minnesota create 2,473 full-time equivalent jobs and indirectly support an additional 18,830 full-time equivalent jobs. *Id.*

According to Dr. Mark Boetel, Ph.D., Entomology at South Dakota State University, there will be aggregate unrecoverable losses of approximately $39,299,642 in North Dakota in 2022 to the sugarbeet crop alone if EPA's Final Order is allowed to stand and chlorpyrifos use remains prohibited. Attachment 1, hereto, at 15.[3] This estimate is based upon the 104,000 North Dakota acres expected to be affected by sugarbeet root maggot in 2022 and using the next best pesticide alternative (Mustang Maxx) in place of chlorpyrifos. In Dr. Boetel's

[3] The use of chlorpyrifos insecticide to control sugarbeet root maggot (SBRM) [Tetanops myopaeformis (Röder)] specifically in sugarbeet, at 1 Joe Hastings, General Agronomist, American Crystal Sugar Company (May 27, 2022).

research, there would be a reduction of 1,565 lbs. of sugar/acre produced, which would involve revenue losses of $201 per acre. *Id.* The 1,565 lbs. of sugar/acre lost applied to the 104,000 acres results in 162,760,000 lbs. of sugar lost in SBRM affected areas.

Taking the $201 per acre lost multiplied by 104,000 acres, equates to $20,904,000 in losses in North Dakota SBRM areas. *Id.* Adding the $20,904,000 of total lost revenue to $18,395,642 in additional total production costs brings the total in losses to $39,299,642 caused by not having chlorpyrifos as an option for sugarbeet root maggot control in sugarbeets. *Id.* This one-year projected loss for 2022 will be compounded in each subsequent crop year due to the resulting use of less effective alternative insecticides.

Thus, North Dakota's (and the Nation's) agricultural industry stands to experience a dramatic adverse reduction in its yield, tax collections, and potentially in sugarbeet crop planting if the Final Order is allowed to stand. Moreover, North Dakota's small rural communities rely substantially on the economic activity of sugarbeet production. Jobs at local agri-businesses, farm equipment dealerships, tire shops, small retailers, diners, donations to high school events, etc. all rely on

sugarbeet production in the Red River Valley. All will likewise be detrimentally impacted.

i. There Are Currently No Viable Alternatives To Chlorpyrifos.

Chlorpyrifos is an essential tool in the North Dakota tool box for control of all arthropod pests in field crops. Different types of pesticides have different "modes of action" by which they mitigate pests. Having more than one pesticide available for pest mitigation is important, since rotation among insecticide groups decreases the development of resistance to insecticides by insects, which can lead to adverse effects such as crop losses or the increased use of less effective insecticides.

Prohibiting chlorpyrifos, which has a unique mode of action in the IRAC1B group, will leave only one remaining pesticide mode of action to "control" most of North Dakota crop pests. Continual use of one pesticidal mode of action generally leads to increased pest resistance, with resulting crop losses and potentially increased pesticide applications. In short, EPA's arbitrary and capricious chlorpyrifos ban will be highly detrimental to North Dakota agriculture as well as to state's agriculture-based economy, as well as to national (and international) food security.

For example, the North Dakota sunflower industry heavily relies on chlorpyrifos applications. Sunflowers attract many insect pests that attack the plants, including cutworms, banded sunflower moths, seed weevils, stem weevils, sunflower beetles, sunflower moths, and Lygus bugs. Unfortunately, many alternative chemistries have limited efficacy on these pests. For example, chlorpyrifos is the only chemistry that is currently able to control seed weevils.

Soybean aphids are also a substantial problem in North Dakota. Chlorpyrifos is heavily used for aphid control on soybean crops (found to be safe by EPA in the 2020 PID) as North Dakota has many insecticide resistance problems to other chemistries – especially pyrethroids which are the other main chemical used for aphids. These pests can lower yields 60% if left unchecked.

For most other commodities in North Dakota, chlorpyrifos is most widely used as a safe seed treatment. After a seed is planted it is highly vulnerable to ground dwelling pests and chlorpyrifos is the product shown to have the most control at this very sensitive stage of plant development.

Similarly, North Dakota's sugarbeet industry is also heavily reliant upon chlorpyrifos (found to be safe by EPA in the 2020 PID) to control webworms, cutworms, flea beetles, and lygus bugs. All are prevalent pests in North Dakota. Chlorpyrifos is the only product that can control sugarbeet root maggots ("SRBM"). In 2020, there were 90,994 total acres grown in areas affected by SRBM in North Dakota. *See* Attachment 2, hereto.[4] In 2021 there were 97,324 total acres grown in areas affected by SRBM in North Dakota, nearly a seven percent increase. *See* Attachment 3, hereto.[5] Based on these figures, approximately 104,000 sugarbeet acres in North Dakota are projected to be affected by SRBM in 2022. *See* Attachment 1 at 1. Without chlorpyrifos, SRBM can decrease crop yields by as much as 45%, a substantial impact to North Dakota's (and the Nation's) sugarbeet production.

EPA's revocation of chlorpyrifos residue tolerances has put sugarbeet producers at great risk, because alternative insecticides for post-emergence SBRM control are not adequate. Attachment 1 at 1.

[4] Map of Sugarbeet Root Maggot Severity (2020), Developed by American Crystal Sugar Company.
[5] Map of Sugarbeet Root Maggot Severity (2021), Developed by American Crystal Sugar Company.

Chlorpyrifos has long been the standard and most effective product used for postemergence SBRM control, it was found to be safe by EPA in the 2020 PID, and it is the insecticide that all potential postemergence insecticides are evaluated against.

Mustang Maxx is considered to be the "next-best" alternative to chlorpyrifos for postemergence insecticide applications for SBRM control but falls well short in efficacy with consequent significantly reduced yields and revenues. *Id.* Mustang Maxx is a pyrethroid insecticide, for which performance declines at temperatures over 80°F, a telling weakness given that fly activity peaks on days that are 80°F and above and that temperatures of 80°F and above are common during May 20th – June 30th.

Dr. Mark Boetel conducted a two-year (2020-2021) field experiment that compared Mustang Maxx and chlorpyrifos (Yuma 4E) for postemergence SBRM control titled Dual Applications of Mustang Maxx for SBRM Control. Dr. Boetel found that when using Mustang Maxx in place of Chlorpyrifos there was a loss of: 16.93% in recoverable sugar/acre; 19.18% in yield (tons/acre); 14.41% in gross revenue/acre, and 70.53% in Net Operating Revenue. *Id.* at 2.

Further, crop rotation is not an effective substitute for chlorpyrifos (or other pesticides) for SRBM control. *Id.* at 5. That is because SRBM larvae overwinter in fields and emerge the next year. Similarly, mechanical control (such as rotary hoe or field harrow cross) and use of cover crops are not an effective SBRM management tool. *Id.*

ii. EPA's Arbitrary And Capricious Final Rule Threatens To Destabilize North Dakota's, The Nation's, And The World's Agricultural Production.

EPA's Final Order effectively banning the use of chlorpyrifos is layered on top of current severe inflationary pressures and the disruption of global grain and fertilizer markets caused by the Russian invasion of Ukraine. EPA's decision comes at a time when North Dakota's growers are experiencing record inflationary farm costs – fuel, seed, fertilizer, and pesticide prices are rising rapidly. North Dakota's growers' already highly narrow margins are being cut yet again. Removing chlorpyrifos as an effective pet control management tool will severely and negatively impact production. The loss of access to chlorpyrifos will also further increase costs at the same time yields are cut since producers will have to use more expensive and much less effective alternatives that they will consequently be compelled to apply more frequently.

Separately, because the United States has invested in a strong domestic sugar industry, consumers are currently shielded from the erratic price swings of the global market. If North Dakota's (and the Nation's) domestic industry continues to get hit by additional production burdens and increased costs, many U.S. consumers will likely turn to less expensive and lower quality, foreign sugar whose production is subject to less stringent standards than those in the United States.

EPA's decision also comes at an extremely poor time for agriculture and sugarbeets. North Dakota's sugarbeet industry is coming off some of its most challenging years. In 2019, one-third of sugarbeet crops were left in the ground do to extreme wet weather in the fall and an early freeze. In 2020, sugarbeet growers had a shortened crops due to a late spring. In 2021 sugarbeet growers faced a record drought.

Now in 2022, North Dakota is having one of the latest springs on record caused by persisting cool and wet weather. While weather is obviously out of the industry's control, pests were previously manageable through safe and effective use of chlorpyrifos. Yet now, even though EPA's own data in the PID well demonstrates that chlorpyrifos is an effective and safe product, its use has been prohibited with little to no

warning, and more notably, no adequate explanation for the reversal of the 2020 PID.

B. North Dakota Will Be Forced To Expend Significant Resources To Deal With The Disposal Of Unusable Chlorpyrifos.

EPA's Final Rule is also arbitrary and capricious because it failed to harmonize EPA's tolerance determinations under the FFDCA with the cancellation process under FIFRA. Pet. Br. 47-54. This fatal error also works great harm to North Dakota and its obligations under FIFRA for pesticide disposal.

North Dakota's growers reasonably expected EPA to continue course with the PID determinations and that chlorpyrifos would be available for use in the 2022 growing season. While North Dakota has been unable to complete a comprehensive statewide survey at this time, it estimates that its growers have many tons of "stranded" and unusable chlorpyrifos stocks remaining, directly due to EPA's sudden revocation of the tolerances.

Section 19 of FIFRA authorizes EPA to establish requirements for disposal of pesticides, but FIFRA disposal regulations are implemented rarely and only in the context of risk-based and time-limited

cancellations. *See* EPA, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Facilities (available at https://www.epa.gov/enforcement/federal-insecticide-fungicide-and-rodenticide-act-fifra-and-federal-facilities).

Here, however, EPA has not proactively made any such necessary disposal regulations, again showing the arbitrary and capricious haste and nature in which the Final Rule was promulgated. Consequently, North Dakota's Pesticide Control Board has now inherited disposal obligations for the vast quantities of accumulated but now defunct chlorpyrifos. And North Dakota, just like the growers and chlorpyrifos manufacturers, had no meaningful advance warning of EPA's about-face in which to then prepare for those disposal obligations. EPA's Final Rule, in addition to being arbitrarily and capriciously promulgated, does not demonstrate good regulatory governance and is unacceptable.

CONCLUSION

For the reasons explained above, and as set forth in Petitioners' Opening Brief, the Court should grant Petitioners' requested relief and vacate the Final Rule.

Dated: May 31, 2022

Respectfully submitted,

STATE OF NORTH DAKOTA

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(5)-(7) of the Federal Rules of Appellate Procedure, I hereby certify that the foregoing brief is proportionately spaced using Word 14-point Century Schoolbook typeface and contains 4,975 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit set by the Court.

Pursuant to Eighth Circuit Rule 28A(h)(2), I further certify that the electronic version of this brief has been scanned for viruses and is virus-free.

Dated: May 31, 2022

/s/ *Paul M. Seby*
Paul M. Seby

CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of May 2022, a copy of the foregoing brief was electronically filed with the United States Court of Appeals for the Eight Circuit. Within five (5) days of receipt of notice that the Brief has been filed and accepted, North Dakota will serve each party separately represented with a paper copy of the Brief.

Pursuant to Eighth Circuit Rule Rule 28A(d), I further certify that ten (10) paper copies of the foregoing brief will be provided to the Court, within five (5) days after receipt of notice that the foregoing has been filed and accepted.

/s/ *Paul M. Seby*
Paul M. Seby

The use of chlorpyrifos insecticide to control sugarbeet root maggot (SBRM) [*Tetanops myopaeformis* (Röder)] specifically in sugarbeet.

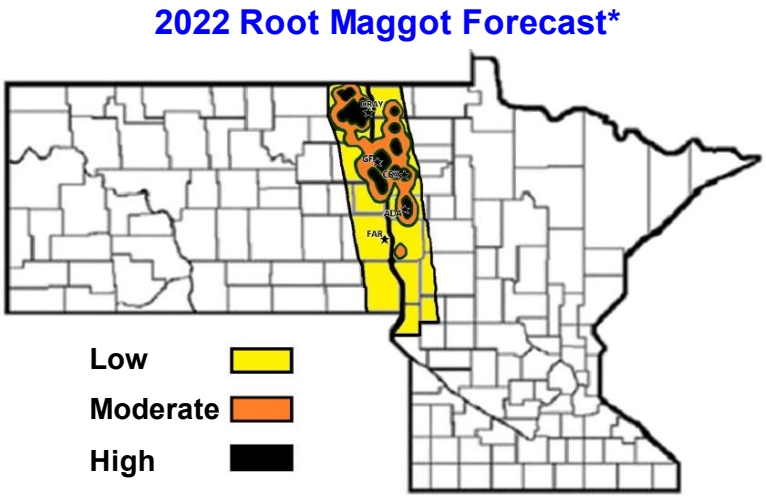
Document written and assembled by:
Joe Hastings, General Agronomist, American Crystal Sugar Company 5-27-22
Providing input and review: Dr. Mark Boetel, North Dakota State University Sugarbeet Entomologist

Total area in 2022 to be affected by sugarbeet root maggot (SBRM) in ND: 104,000 acres

Approximately 104,000 sugarbeet acres in North Dakota are projected to be affected by SBRM. This calculation is based on the acres identified in 2021 of SBRM observations from American Crystal Sugar Company (ACSC) Ag Staff and North Dakota State University Sugarbeet (NDSU) Entomologist Dr. Mark Boetel. From these observations a SBRM severity map was developed, and the 2021 acres planted to sugarbeets that were in these SBRM affected areas were totaled. The SBRM area and affected acres has been increasing at a rate of 7%/year in North Dakota. This 7% increase is built into the estimation of approximate acres to be treated for the 2022 projected acres.

The counties in which sugarbeet will be grown where SBRM pressure exists (2021 planted acreage): Grand Forks (33,125 acres), Pembina (59,712 acres), Traill (29,420 acres), and Walsh (44,708 acres).

Dr. Boetel (NDSU Sugarbeet Entomologist) Projected 2022 SBRM Severity Map



ALTERNATIVE METHODS OF CONTROL TO CHLORPYRIFOS

Alternative Insecticides for Control of Sugarbeet Root Maggot.
The statements on alternative insecticides and control practices were developed in collaboration with Dr. Boetel, NDSU Sugarbeet Entomologist as an additional qualified expert. All alternative insecticides to chlorpyrifos for post emergence SBRM control are not adequate.

Zeta-cypermethrin, Mustang Maxx (pyrethroid IRAC Group 3A). Mustang Maxx is considered to be the next-best alternative to chlorpyrifos for postemergence insecticide applications for SBRM control but falls short in efficacy reducing yield and revenue. Mustang Maxx can be applied at-plant and foliar at a rate of 4 fl oz/a (0.025 lb ai/acre). A maximum of 12 fl oz/acre (0.075 lb ai/acre) per season can be

applied. There is 50-day pre-harvest interval. Zeta-cypermethrin only provides suppression of SBRM larvae and not control. It is a pyrethroid insecticide, for which performance declines at temperatures over 80°F. It should be noted that fly activity peaks on days that are 80°F and above and that temperatures of 80°F and above are common during the period of May 20th – June 30th. Mustang Maxx is not as effective as chlorpyrifos for SBRM control. Dr. Boetel conducted a two-year (2020-2021) field experiment that compared Mustang Maxx and chlorpyrifos (Yuma 4E) for postemergence SBRM control titled Dual Applications of Mustang Maxx for SBRM Control.
See Table 1.

Table 1: Dr. Boetel study of Dual applications of Mustang Max in Comparison to Chlorpyrifos

2020-2021 Boetel study					*Cost of Production
Dual Applications of Mustang Maxx for SBRM Control					$1,110
At-Plant	POST	RSA	Tons/A	Gross Rev/A	Net $/A
Counter 8.9 lbs	Yuma 4E 2 pts. 2X	9,244	29.2	$1,395	$285
Counter 8.9 lbs	Mustang Maxx 4 oz. 2X	7,679	23.6	$1,194	$84
	Difference Chlor vs MM	1,565	5.6	201	$201
	% Difference	16.93%	19.18%	14.41%	70.53%
*Production Costs = $1,110					
Based on Minnesota & North Dakota Farm Business Management Education Report					
Red River Valley 2021. See Attachment: 2021 FBM RRV Report					
Weighted average of production costs scenarios pages 39-42					
Attachment: Grower Production Costs 2021 Update					

This most recent research study reflects the current state of elevated SBRM severity that is being experienced. Mustang Maxx did not perform as well as chlorpyrifos. When using Mustang Maxx in place of Chlorpyrifos (Yuma) there was a loss of: 16.93% in recoverable sugar/acre (RSA); 19.18% in yield (tons/acre); 14.41% in gross revenue/acre, and 70.53% in Net Operating Revenue. To note, specific yield, recoverable sugar/ace, and revenue data from separate research trials cannot be directly compared against other study's results as they are their own data set within the individual scientific study and the time period in which the evaluation occurred.

Esfenvalerate, Asana XL (pyrethroid IRAC Group 3A). Asana XL can be applied foliar at a rate of 9.6 fl oz/a (0.05 lb ai/acre). A maximum of 28.8 fl oz/acre (0.15 lb ai/acre) per season can be applied. There is 21-day pre-harvest interval. It is a pyrethroid insecticide, for which performance declines at temperatures over 80°F. It should be noted that fly activity peaks on days that are 80°F and above and that temperatures of 80°F and above are common during the period of May 20th – June 30th. Its performance for SBRM control is similar to that of Mustang Maxx only providing suppression of SBRM. Asana is not as effective as chlorpyrifos for SBRM control.

Terbufos, Counter 20G (organophosphate IRAC Group 1B). Counter 20G is a granular insecticide that can be applied at-plant banded at 3 – 6 oz./1,000 ft. of row. This equates to 4.5 – 8.9 lb/acre in 22-inch rows (0.9 – 1.8 lb ai/acre). Sugarbeets in the RRV are planted in 22-inch rows. Counter 20G can also be applied postemergence. Counter 20G can only be applied once per season and there is a 90-day preharvest interval. Counter 20G is the best at-plant insecticide for controlling SBRM larvae and is the standard in which all at-plant insecticides are evaluated against. Even with this level of control, it is not a standalone insecticide for SBRM control and postemergence insecticides applications are needed under moderate fly pressure for optimum control and protection to have the highest crop potential. Please note Dr. Boetel's study from 2020 – 2021 shown below.
See Table 2.

Table 2: Dr. Boetel study of Dual applications of Mustang Max in Comparison to Chlorpyrifos

2020-2021 Boetel study					Cost of Production
Dual Applications of Mustang Maxx for SBRM Control					$1,110
At-Plant	POST	RSA	Tons/A	Gross Rev/A	*Net $/A
Counter 8.9 lbs	Yuma 4E 2 pts. 2X	9,244	29.2	$1,395	$285
Counter 8.9lbs		6,797	21.4	$1,029	($81)
Untreated Check		6,085	19.4	$907	($203)
Diff. Chlorpyrifos + Counter vs. Counter		2,447	7.8	366	$366
	% Difference	26.47%	26.71%	26.24%	128.42%
*Production Costs = $1,110					
Based on Minnesota & North Dakota Farm Business Management Education Report					
Red River Valley 2021. See Attachment: 2021 FBM RRV Report					
Weighted average of production costs scenarios pages 39-42					
Attachment: Grower Production Costs 2021 Update					

Data from this study shows that an at-plant insecticide alone is not enough to achieve optimal SBRM control. When comparing only using Counter at-Plant to Counter at-plant with a postemergence Chlorpyrifos (Yuma) application there was a loss of 26.47% in recoverable sugar/acre (RSA), 26.71% in yield (tons/acre), 26.24% in gross revenue/acre, and 128% in Net Operating Revenue. To note, specific yield, recoverable sugar/ace, and revenue data from separate research trials cannot be directly compared against other study's results as they are their own data set within the individual scientific study and the time period in which the evaluation occurred.

Phorate, Thimet 20G (organophosphate IRAC Group 1B). Thimet 20G is a granular insecticide applied postemergence in 5 – 7-inch bands at 3.2 – 5.0 oz./1,000 ft. of row. This equates to 4.9 – 7.5 lb/acre in 22-inch rows (1.0 – 1.5 lb ai/acre). Sugarbeets in the RRV are planted in 22-inch rows. It can only be applied once and has a 30-day preharvest interval. Thimet applications require the modification/creation of existing equipment to attach delivery systems of the product which can create an additional hurdle for applications. Thimet needs to be applied in advance of sugarbeet root maggot fly pressure and requires moisture (precipitation) and incorporation into soil to become activated for fly control. Therefore, a post emergence liquid insecticide application is needed if these conditions do not occur which is out of the producer's control. Also, if fly pressure is at high levels a chlorpyrifos application is necessary for control even if Thimet had been applied.

Neonicotinoid Seed Treatments (IRAC Group 4A): NipsIt (clothianidin); Poncho Beta (clothianidin + beta-cyfluthrin); Cruiser (thiamethoxam). Neonicotinoid seed treatments are an at-plant insecticide option for SBRM larvae and do not offer complete control but only a small level of suppression. Neonicotinoid seed treatments do not control SBRM maggot as well as Counter 20G (terbufos) when it is applied at high rate of 8.9 lb/acre. Neonicotinoid seed treatments are not a stand-alone insecticide for SBRM root maggot control and require a supplemental postemergence insecticide under moderate pressure. Dr. Boetel conducted research from 2015 to 2021 which shows a neonicotinoid seed treatment (Poncho Beta) is not as effective as Counter 20G.
See Table 3 and attachment Boetel Additive Granular Insecticide.

Table 3: Dr. Boetel 2015-2021 Granular Insecticides for SBRM Control

Additive Granular Insecticides for SBRM Control		
At-Plant	**RSA**	**Tons/A**
Counter 8.9 lbs	7,771	27.1
Poncho Beta	7,533	26.3
Untreated Check	5,744	20.8

Data shows that Counter 20G at-plant is more effective than neonicotinoid seed treatments. To note, specific yield, recoverable sugar/ace, and revenue data from separate research trials cannot be directly compared against other study's results as they are their own data set within the individual scientific study and the time period in which the evaluation occurred.

Imidacloprid, Midac FC (neonicotinoid, IRAC Group 4A). Midac FC can be applied at-plant in-furrow at 13.6 fl oz/acre (0.18 lb ai/acre). It can only be applied once. Midac FC is a neonicotinoid and performs similarly to the neonicotinoid seed treatments and not as well as Counter 20G. Midac FC is not a stand-alone insecticide for SBRM root maggot control and requires a postemergence insecticide under moderate pressure.

Spirotetramat, Movento HL (tetronic and tetramic acid derivatives IRAC Group 23) Movento HL can be applied foliar at 2.25-4.5 fl oz./acre (0.07-0.14 lb ai/A). The maximum use per crop season is 9 fl oz./acre (0.28 lb ai/acre) with an application interval of 14-days and pre-harvest interval of 28-days. It is only labeled to suppress Sugarbeet Root Maggot and does not control it.

Naled, Dibrom 8 Emulsive (organophosphate IRAC Group 1B). Dibrom at 1 pt./acre can be applied foliar to sugarbeets. Not more than 5 pts/acre can be applied per season (4.7 lbs. a.i./acre). Do not apply within two days of harvest. The label requires a minimum of 7 days between applications and no more than 5 applications can be applied per season. Naled does provide some control of SBRM but is not as effective as a 2 pts./acre rate of chlorpyrifos. Naled has shorter residual activity than chlorpyrifos as well, which allows new flushes of flies to distribute into fields sooner.

Alpha-cypermethrin, Fastac CS, Fastac EC (pyrethroid IRAC Group 3A). Fastac CS at 3.8 fl oz./acre (0.025 lbs. a.i./acre) is applied in a 3 – 4-inch T-band at plant. Subsequent foliar applications can also be made. Maximum rate is 3.8 fl oz./acre with a maximum seasonal application of 11.4 fl oz./acre (0.075 lb a.i./acre). There is a 4-day application interval with a 50-day pre-harvest interval. Alpha-cypermethrin only provides suppression of SBRM larvae and not control. It is a pyrethroid insecticide, for which performance declines at temperatures over 80°F. It should be noted that fly activity peaks on days that are 80°F and above and that temperatures of 80°F and above are common during the period of May 20th – June 30th.

Integrated Pest Management and Cultural Control Practices:

Early planting & sugarbeet size. Early planting allows for possibly larger beet roots during peak SBRM feeding activity (mid-June to mid-July). Larger roots are more able to withstand feeding injury and can avoid potential yield impacts if adequate rainfall is received. Roots of smaller, late-planted beets are more vulnerable to feeding injury. Severe injury can kill seedlings and cause major stand reductions or result in smaller, sprangled, bulb-shaped roots at harvest. Early planting and sugarbeet stand establishment cannot be relied upon as a control measure as it is a product of the environment, field conditions, planting date, emergence, and growing degree days. Sugarbeet growers plant sugarbeets as early as they possibly can every year to optimize yields and try to minimize potential disease and insect pressure. If the environment and soil is too wet to plant, this delays planting later and results in smaller beets being present when fly activity and the resulting larval feeding occur.

SBRM Degree Day Model. A SBRM Degree Day Model has been developed to track root maggot development. It is extremely accurate and heavily relied upon by growers to determine when insecticide applications should be made for optimal SBRM control.

The formula for the daily sugarbeet root maggot degree days is:

Daily SBRM DD (Degree Days) = (((Daily Max Temp °F + Daily Min Temp °F) / 2) - 47.5 °F

The upper threshold on the maximum temperature is 99 °F. Calculations begin on April 1. Peak fly activity of sugarbeet root maggot occurs under warm (about 80 °F+), low-wind (less than 10 mph) conditions at about 651 DD. This typically occurs 2-3 days after reaching 600 DD.

The following table shows suggested timing to apply postemergence liquid or granular insecticides for three latitudinal zones within Red River Valley.

	Target DD for Insecticide Applications	
	Liquid Insecticides	Granular Insecticides
Northern RRV	590-620 DD	440-550 DD
Central RRV	585-615 DD	410-545 DD
Southern RRV	580-610 DD	400-540 DD

General recommendations

Granule Applications**:** apply at ***6-14 days*** before expected SBRM fly activity peak.
Liquid Applications**:** apply at ***2-3 days*** before expected SBRM fly activity peak.

Fly Stake Monitoring. Starting in late-May fly sticky stakes are deployed in fields that are grown in areas with a history of SBRM pressure. Each stake is coated with a sticky substance called "Tanglefoot®" to trap flies as they land on the stake. The number of flies captured reflects the level of fly activity for the area. Decisions whether a postemergence insecticide treatment is warranted are based on the fly count numbers. When a cumulative count of 70 flies have been captured, it justifies an insecticide application. Fly stakes are checked every Monday, Wednesday, and Friday until about the end of June. The population increases observed in recent years have led to increasing the sticky stake monitoring program to roughly 150 locations each growing season representing the areas affected by SBRM.

Crop rotation. Sugarbeets are part of a 3 – 4-year crop rotation in the RRV. Crop rotation is not an option for sugarbeet root maggot control because the adult fly stage of the pest is readily mobile and can easily move into and colonize neighboring sugarbeet fields. The larvae from the previous year overwinter in the sugarbeet field. The next spring, they pupate and then emerge as flies and travel to the current years sugarbeet field locations. They can be blown to new areas by high wind events.

Mechanical Control. Mechanical control is not a highly effective SBRM management tool. It is not a practice which is implemented in production. It is thought that using a rotary hoe or field harrow across beet rows in June following egg deposition may help marginally to reduce maggot numbers. These tillage practices can move eggs away from beet seedlings and onto the soil surface, which exposes them to predators and the elements. As a result of exposure to heat and dry air, the developing maggots sometimes die before or shortly after hatching. This cultural strategy works best if hot and dry weather coincides with egg deposition.

Cover Crops. Use of cover crops is not a highly effective SBRM management tool. It is mainly used to protect from wind erosion in fields. Sowing oat cover crops immediately before beet planting may reduce SBRM injury to sugarbeet roots. It is thought cover crops could provide a dense plant canopy and the shading helps keep soils moist. This condition is believed it would keep larvae feeding higher in the

soil profile (away from tap roots and nearer to insecticide-treated soil). Also, the dense network of oat roots may impair the ability of larvae to locate and feed on beet roots.

Host plant resistance. A couple of sugarbeet lines with varying tolerance to sugarbeet root maggot feeding injury were identified by Dr. Campbell at the Fargo USDA. Thus far, the genetic trait(s) that confer SBRM tolerance in these lines has not been successfully incorporated into elite germplasm. Thus, although this potential management tool is encouraging, it is not yet available commercial sugarbeet production

EFFICACY OF CHLORPRIFOS

To have optimum control of SBRM, growers in areas plagued with the pest need to couple their control measures with an at-plant and postemergence insecticide. The at-plant insecticide is applied so it is in place for early season protection against other pests and eventual control of SBRM larval feeding injury. The postemergence insecticide is used to reduce the number of SBRM flies and thereby the number of eggs that are laid that will turn into feeding larvae. This gives the at-plant insecticide a better chance to work effectively against the reduced larvae population.

Timing of the postemergence insecticide is critical so that control is optimized, and the insecticide is as effective as it can be. The SBRM Degree Day model and fly stake counts are used in order to get this timing right when fly populations warrant a treatment. Chlorpyrifos as a postemergence insecticide has been the most effective and most commonly used insecticide for this application for several years. When daily or cumulative captures of SBRM flies reach 70 flies/stake in an area, a chlorpyrifos application at 2pts/acre (32 oz/acre) is recommended. If a treatment is made, the location continues to be monitored and if SBRM fly populations resurge a second postemergence insecticide may be required.

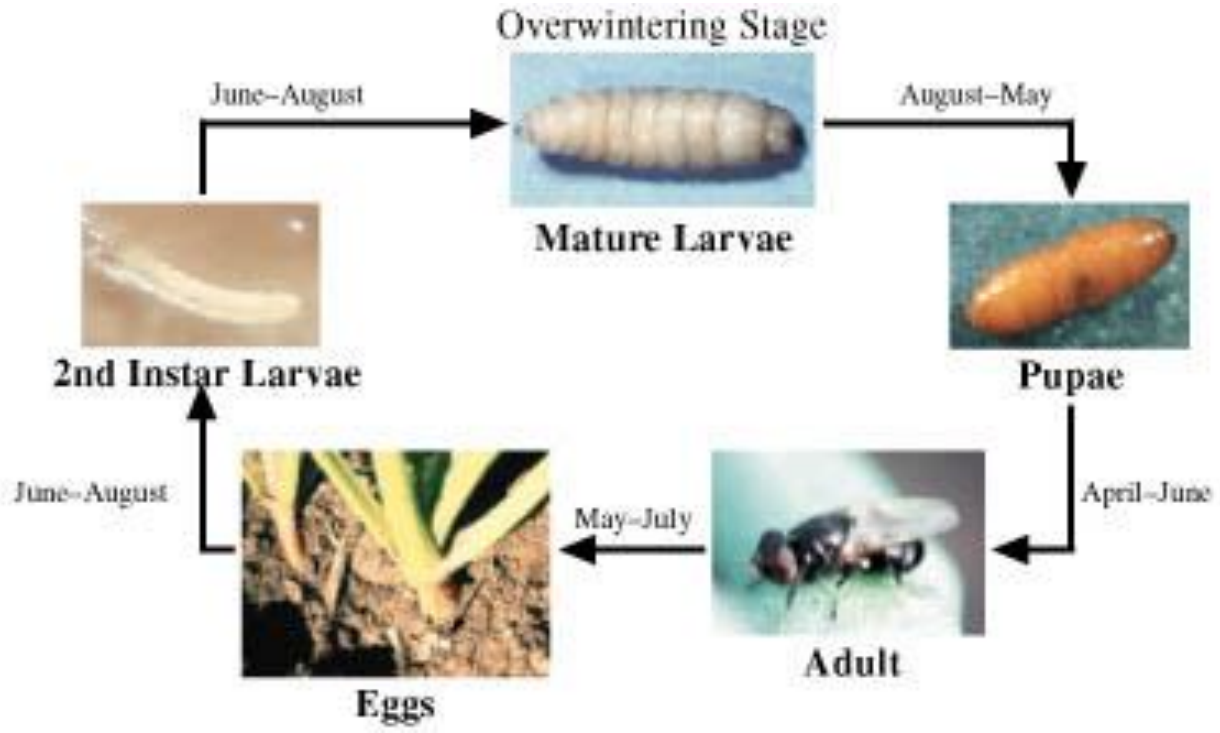
The EPA's revocation of chlorpyrifos residue tolerances has put great risk in the ability to control SBRM. Chlorpyrifos has been the standard product used for postemergence SBRM control and it is the insecticide standard that all potential postemergence insecticides are evaluated against**. Dr. Boetel, sugarbeet entomologist at NDSU, has continually evaluated possible alternative insecticides throughout the years that could provide similar efficacy; unfortunately, there are none that perform as well as chlorpyrifos**.

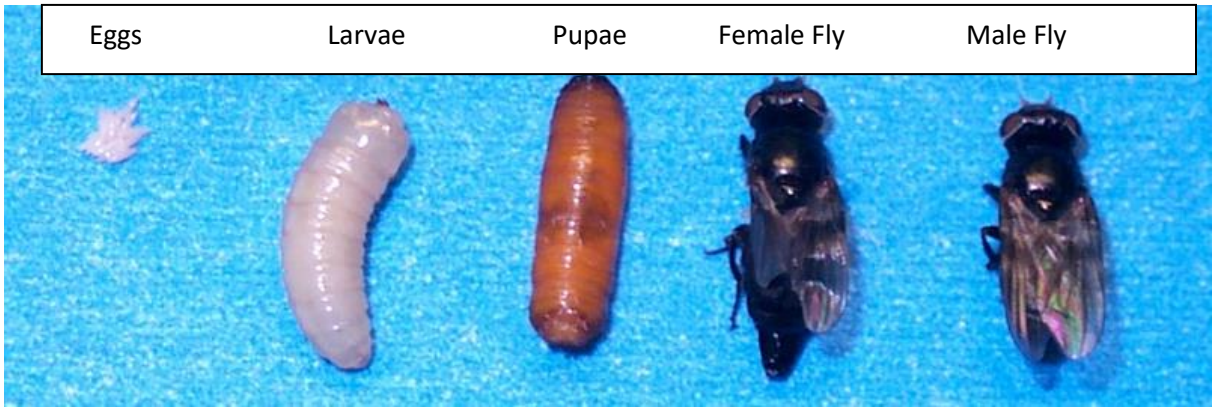
The researched documentation of this is in Dr. Boetel's 2020 and 2021 study evaluating Mustang Maxx against chlorpyrifos (Yuma 4E). This most recent research study reflects the current state of elevated SBRM severity that is being experienced. Referencing Table 1, Mustang Maxx has been identified as the next best postemergence insecticide, but Mustang Maxx clearly does not perform as well as chlorpyrifos. When using Mustang Maxx in place of Chlorpyrifos (Yuma) there was a loss of 70.53% in Net Operating Revenue.

When using (1) effective insecticides (2) at the right time and (3) place for the control of SBRM, resulting sugarbeet production can be on par with that of acres not impacted by SBRM. All three of these components are equally important to achieve this goal. The result of using a less effective postemergence insecticide, such as Mustang Maxx, would be increased losses in sugarbeet production and likely an increase in SBRM fly activity thus accelerating the expansion of their distribution throughout the RRV. This would lead to the pest affecting more acres and further increasing losses in yield and revenue for producers in the region. It not only impacts the current year, but with more surviving larvae the problem will likely continue to grow in severity and acreage affected the next growing season and in future years.

Sugarbeet root maggot life cycle

Sugarbeet root maggot (SBRM) can be devastating to the sugarbeet crop. It is capable of causing reductions in sugarbeet yield and quality, which leads to less recoverable sugar/acre being produced and therefore a loss in revenue. The damage to sugarbeet is caused from SBRM larvae feeding on the sugarbeet roots. To understand how to control SBRM, understanding of its life cycle is required. SBRM flies emerge from the previous year's beet fields in late-May through June. The SBRM flies migrate to the current year's beet fields then mate and lay their eggs next to sugarbeet seedlings. They lay their eggs directly next to the seedling sugarbeet root, so once the eggs hatch the larvae have easy access to feed on the sugarbeet roots. The larvae remain in these fields until the following spring, pupate then emerge from those fields as flies to start the cycle over again in another new sugarbeet field.





Sugarbeet Root Maggot Fly.

Eggs laid by SBRM flies next to sugarbeets.

Sugarbeet Root Maggot Feeding.

Sugarbeet Root Maggot feeding damage.

Pupating Sugarbeet Root Maggot.

Cycle starts over with the Sugarbeet Root Maggot Fly.

Current state of Sugarbeet Root Maggot:
Chlorpyrifos has been the most effective postemergence liquid insecticide available to use in sugarbeet root maggot control, and it has been vitally important as part of the overall SBRM control strategy. On February 28th, 2022, the EPA revoked all residue tolerances. The loss of chlorpyrifos for use in sugarbeets creates a critical void in which only substantially less effective postemergence insecticide options remain, thus creating the potential for accelerated severity and expanded geographic distribution of economically damaging SBRM populations. This will, in turn, likely increase the severity of economic loss in areas affected by the sugarbeet root maggot.

The American Crystal Sugar Company's (ACSC) growing area is in the Red River Valley (RRV) on the borders of North Dakota and Minnesota. American Crystal Sugar Company is a grower owned cooperative in which grower shareholders raise sugarbeets on roughly 413,000 acres each year. In 2021, 149,761 of those acres (36%) were grown in areas affected by sugarbeet root maggot pressure. Those acres are grown by 348 individual farms, or 54% of ACSC's total farms.

In 2021, 181,447 total sugarbeet acres were planted in North Dakota, where 198 North Dakota farmers grew 97,324 acres of sugarbeets in areas identified as being affected by SBRM. The 97,324 sugarbeet acres represents 54% of American Crystal Sugar Company's North Dakota Acres.

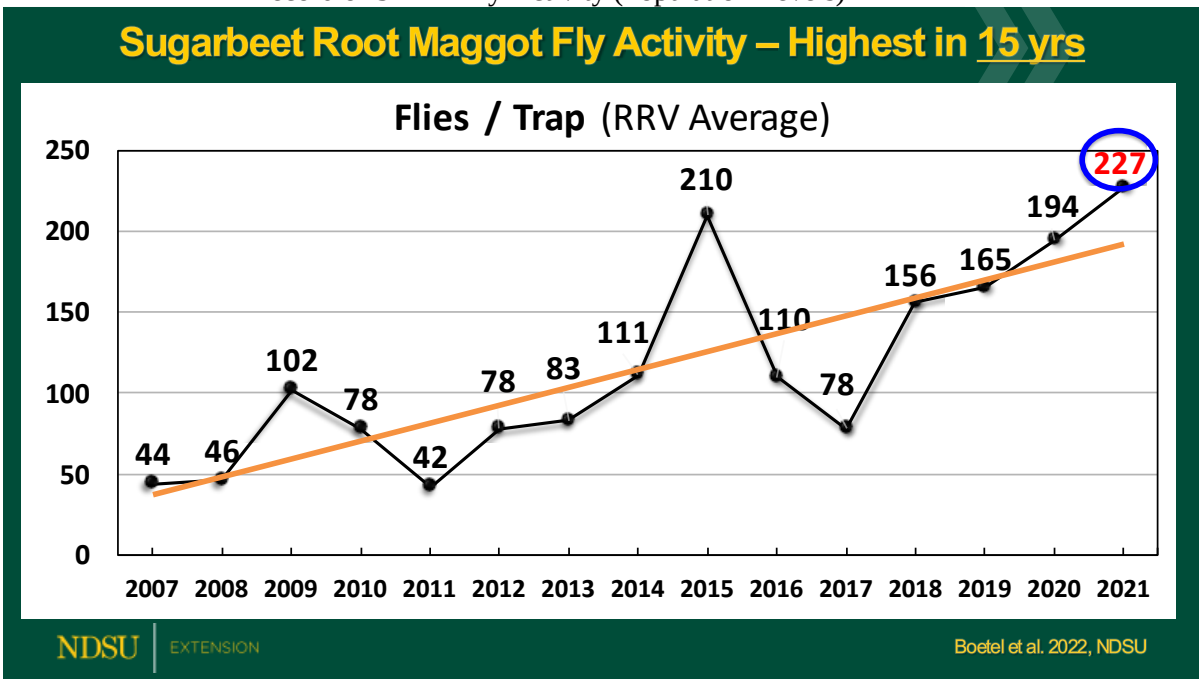
Over the past 5 years, the sugarbeet root maggot footprint has increased at an average rate of about 11,000 acres/year in the RRV.

Table 5: Sugarbeet Acres in SBRM affected areas by year.

	ND & MN Sugarbeet Acres Affected by SBRM based on Severity Maps					
	2016	2017	2018	2019	2020	2021
Acres	86,085	105,805	119,749	133,872	140,354	149,761

In addition to this, population levels have been increasing as well, with 2021 having the highest infestation levels in the last 15 years.

Dr. Boetel's Historical Record of SBRM Fly Activity (Population Levels)

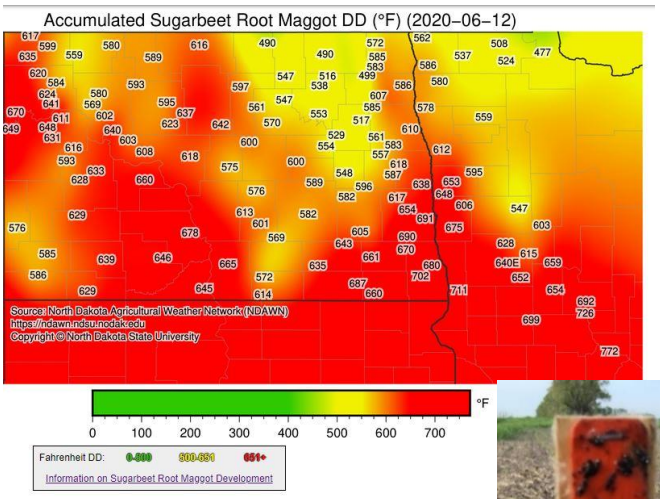


A two-pronged approach is needed to effectively protect the sugarbeet crop from SBRM damage. The first component of this strategy involves applying an effective At-Plant insecticide to protect the root from larval feeding injury; however, at-Plant insecticides are incapable of doing this all on their own due to the common occurrence of overwhelmingly high SBRM larval infestations. Therefore, an effective post emergence insecticide is essential to control the SBRM flies thereby reduce the fly population and minimize mating and egg deposition. This combination of at-plant and postemergence tactics provides the best potential for sufficient SBRM control. Chlorpyrifos has been the most effective insecticide for these postemergence insecticide applications for SBRM fly control.

American Crystal Sugar's Ag Staff is trained in SBRM identification and are Certified Crop Advisors (CCA's) and recommend the use of Chlorpyrifos as a precise, targeted application, only at the right time, right place, and in the right amount. To help us do this, we use tools to help us time insecticide applications in only the locations where the SBRM fly populations warrant their use.

Typically, SBRM fly activity occurs during the first 2-3 weeks in June. North Dakota State University has developed a SBRM Growing Degree Day model that helps predict the timing of SBRM Peak Fly Activity. The model also allows for proper timing of insecticide applications. An application based on the model's algorithm is publicly available on the North Dakota Agricultural Weather network (NDAWN) for producers, agriculturists, and other crop advisors to monitor Degree Day accumulations. It can be viewed at: https://ndawn.ndsu.nodak.edu/sugarbeet-growing-degree-days.html
Peak fly activity occurs around 650 Degree Days for SBRM.

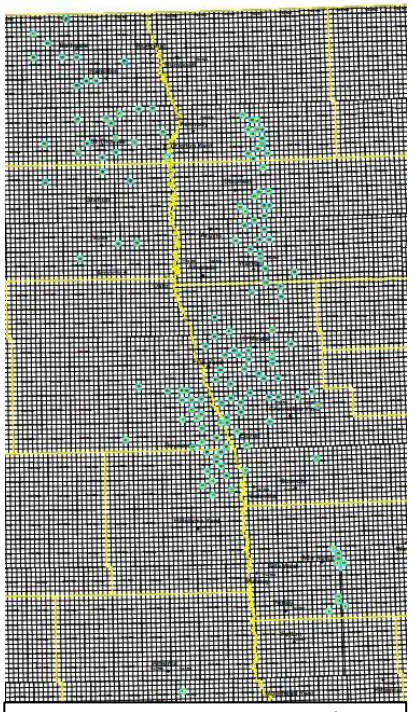
Below is a map from June 12th, 2020 showing SBRM GDD's at that time.



In order to only treat areas that have economically significant SBRM activity with Chlorpyrifos, our ACSC Ag Staff set up monitoring stakes throughout the pest's range. Staff from North Dakota State University does their own stake monitoring as well. In 2021 there were 150 total locations that were monitored every Monday, Wednesday and Friday during the SBRM fly season.

Fly stake counts are used to determine if fly activity is high enough, based on an economic threshold of the number of flies trapped, to justify a postemergence insecticide application. It is recommended to treat sugarbeet fields when fly capture counts reach a daily or cumulative total of 70 flies/stake.

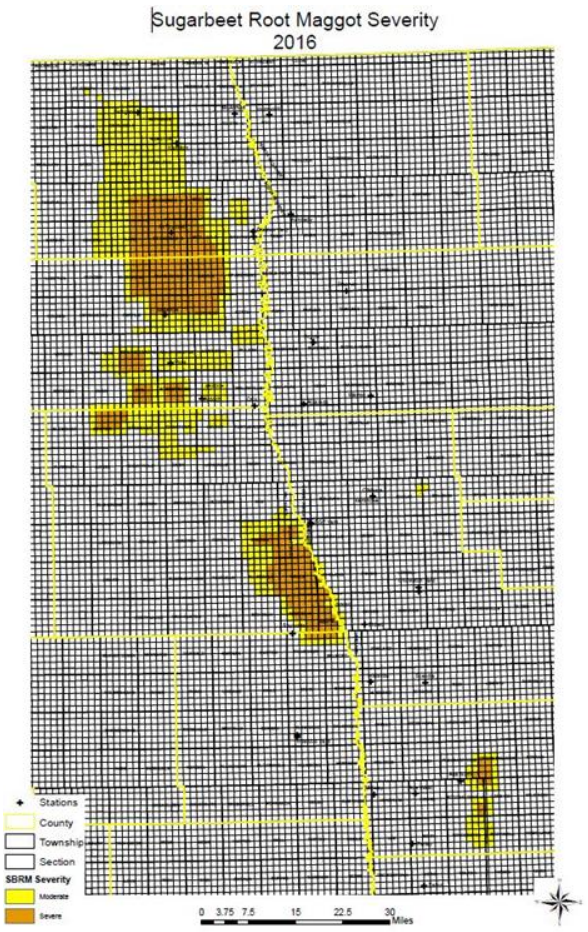
SBRM Monitoring Stake

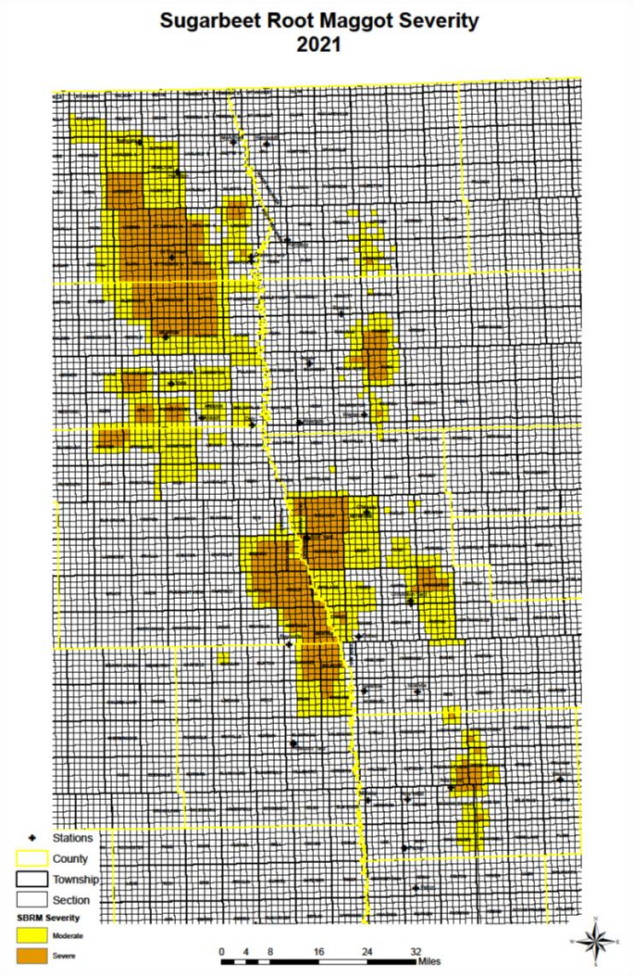


SBRM Monitoring Stake Locations

Through all of this monitoring, our Ag Staff has been able to develop maps of the areas affected with SBRM and their severity. This helps us to dial in where to monitor for the potential need of a postemergence treatment of chlorpyrifos for necessary SBRM control. We are seeing the areas affected by SBRM expanding in recent years as well as increases in the severity of the populations.

The maps below, and attached, illustrate the geographic expansion of the SBRM problem area from 2016 – 2021 as well as increases in population intensity (severe shown in orange). This demonstrates the critical situation growers are facing and underscores the importance of their having access to chlorpyrifos as a control option.





The use of pest management-related decision tools such as the Degree Day model, SBRM population monitoring, and the economic threshold, as well as a lot of time spent in the field, have made insecticide-based SBRM control a very targeted and precise crop management strategy in the RRV growing area.

All of this information is shared with our grower shareholders to educate them on the judicious and effective use of insecticides for SBRM control, and chlorpyrifos has been an integral component of this approach. This is accomplished through multiple educational avenues. Grower Seminars are delivered annually by university Extension specialists, and our own ACSC agricultural staff give presentations at our annual "Your Way To Grow" winter grower shareholder meetings. Additionally, ACSC publishes a periodic newsletter, "Ag Notes", that educates producers on best management practices on a variety of issues, including insect pest control.

One-on-one conversations between Agriculturists and growers occur throughout the year, and these conversations become more frequent as SBRM populations start to appear and decisions need to be made on whether there is a need to make a post emergence insecticide application as well as its proper timing and in the location where it is justified.

DISCUSSION OF ECONOMIC LOSS

The EPA's revocation of chlorpyrifos residue tolerances has put sugarbeet producers at great risk relating to their ability to control the SBRM. Chlorpyrifos has been the standard and most effective product used for postemergence SBRM control and it is the insecticide that all potential postemergence insecticides are evaluated against**. For much of the past two decades, Dr. Boetel, NDSU sugarbeet entomologist, has been pursuing possible alternative insecticides and other potential control tactics that could provide similar efficacy, unfortunately there are none that perform as well as chlorpyrifos.**

This was demonstrated in Dr. Boetel's most recent research study, Dual Applications of Mustang Maxx for SBRM Control 2020-2021, reflecting the current state of elevated SBRM severity that is being experienced. Mustang Maxx has been identified as the next best postemergence insecticide, but Mustang Maxx clearly does not perform as well as chlorpyrifos. Referencing Table 1, when using Mustang Maxx in place of Chlorpyrifos there was a loss of: 16.93% in recoverable sugar/acre (RSA); 19.18% in yield (tons/acre); 14.41% in gross revenue/acre, and **70.53% in Net Operating Revenue**.

In applying Dr. Boetel's recent research data from this 2020-2021 study, it is estimated that there will be aggregate unrecoverable losses of approximately $39,299,642 in North Dakota in 2022 for ACSC's grower members if those growers are not permitted to use chlorpyrifos. This estimate is based upon the 104,000 North Dakota acres expected to be affected by sugarbeet root maggot in 2022 and using the next best alternative (Mustang Maxx) in place of chlorpyrifos. In Dr. Boetel's research, there would be a reduction of 1,565 lbs. of sugar/acre produced, which would involve revenue losses of $201/acre. The 1,565 lbs. of sugar/acre lost applied to the 104,000 acres results in 162,760,000 lbs. of sugar lost in SBRM affected areas. Taking the $201/acre lost multiplied by 104,000 acres equates to $20,904,000 in losses in North Dakota SBRM areas.

To make up for the lost sugar production associated with those affected acres, would equate to an additional 16,573 acres of sugarbeets be produced. This is based on ACSC's 5-year average of recoverable sugar produced/acre (9,821 lbs. of sugar/acre). Dividing the 162,760,000 of lost sugar by 9,821 lbs. of sugar/acre results in 16,573 acres. The cost of sugarbeet production/acre is estimated at $1,110/acre from the 2021 Crop Enterprise Analysis done by Minnesota and North Dakota Farm Business Management Education program. One can assume that with recent inflation that this has increased for the 2022 crop year production costs. Applying $1,110/acre in production costs to the additional 16,573 acres results in $18,395,642 of additional production costs to replace the sugar that would be lost.

Combining the previously stated $20,904,000 of total lost revenue and the $18,395,642 in additional total production costs, brings the total in losses to $39,299,642 caused by not having chlorpyrifos as an option for sugarbeet root maggot control in sugarbeets. This is a one-year loss (2022) and will be replicated (and likely increase) in each subsequent crop year due to the use of less effective alternative insecticides.

In addition to the grower losses described above, there is reason to think ACSC would likely incur additional postharvest losses during crop storage, because damaged sugarbeet roots piled with undamaged roots can lead to the development of hotspots within storage piles thereby causing undamaged sugarbeets to store poorly and even rot during storage. It should be noted that these losses could also occur every year and, as sugarbeet root maggot incidence increases, the losses would likely increase exponentially.

On November 18th, 2020, the EPA released the "Revised Benefits of Agricultural Uses of Chlorpyrifos". This document covered sugarbeets and acknowledged the elevated pressure in the Minnesota and North Dakota growing region. In this document it is stated that they estimate yield losses of 45% from poor control.

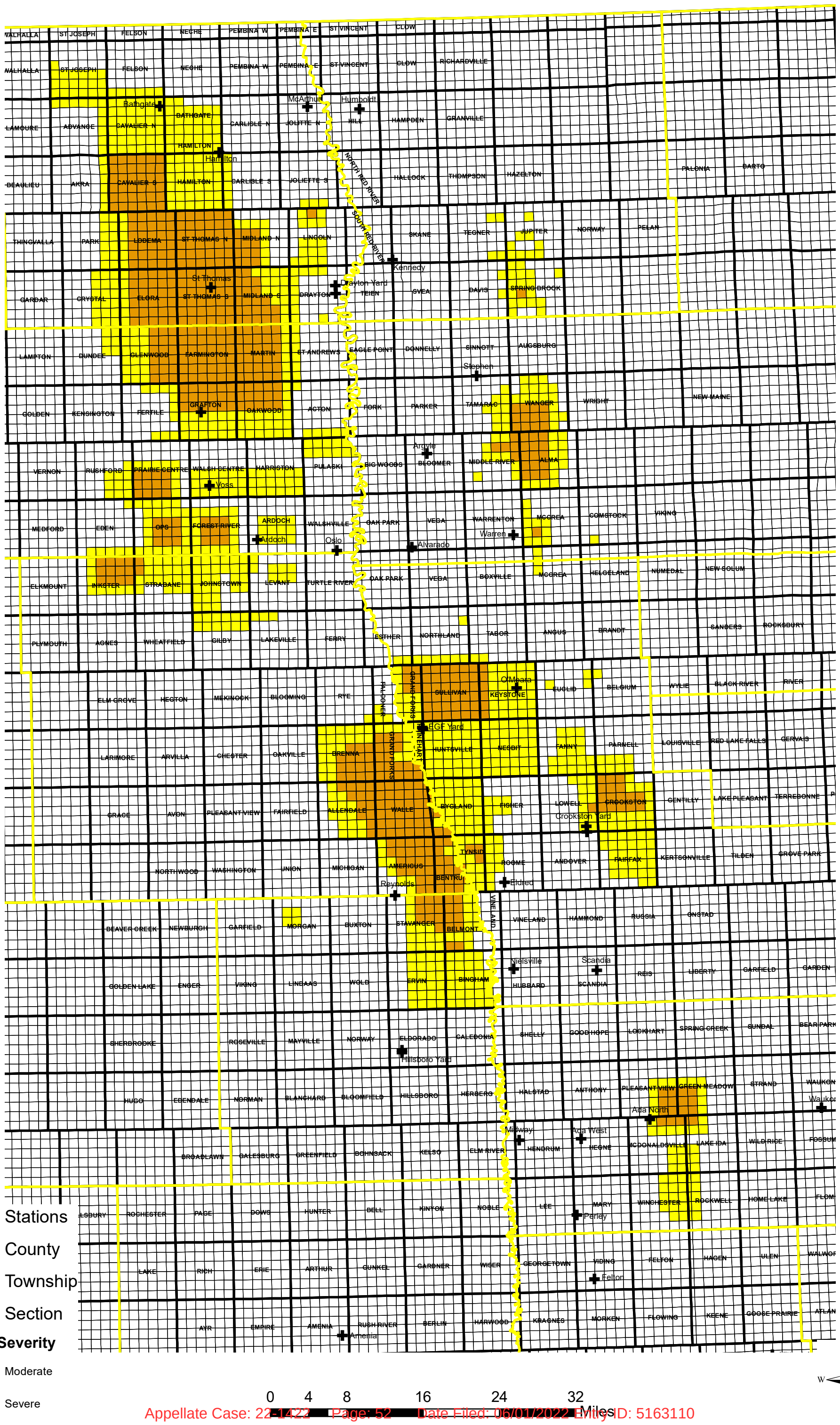
2020 Chlorpyrifos Agricultural Benefits EPA
https://www.regulations.gov/document/EPA-HQ-OPP-2008-0850-0969
pages 48-49.

In EPA's December 2020 Chlorpyrifos Proposed Interim Registration Review Decision, it recognized chlorpyrifos use for sugar beets as a high-benefit agricultural use that the agency has determined will not pose potential risks or concerns with an FQPA safety factor of 10X. The document went on to state that sugar beets had a potentially very high per acre benefits of almost $500 per acre in parts of Minnesota and North Dakota, leading to high-end estimated benefits of over $30 million overall.

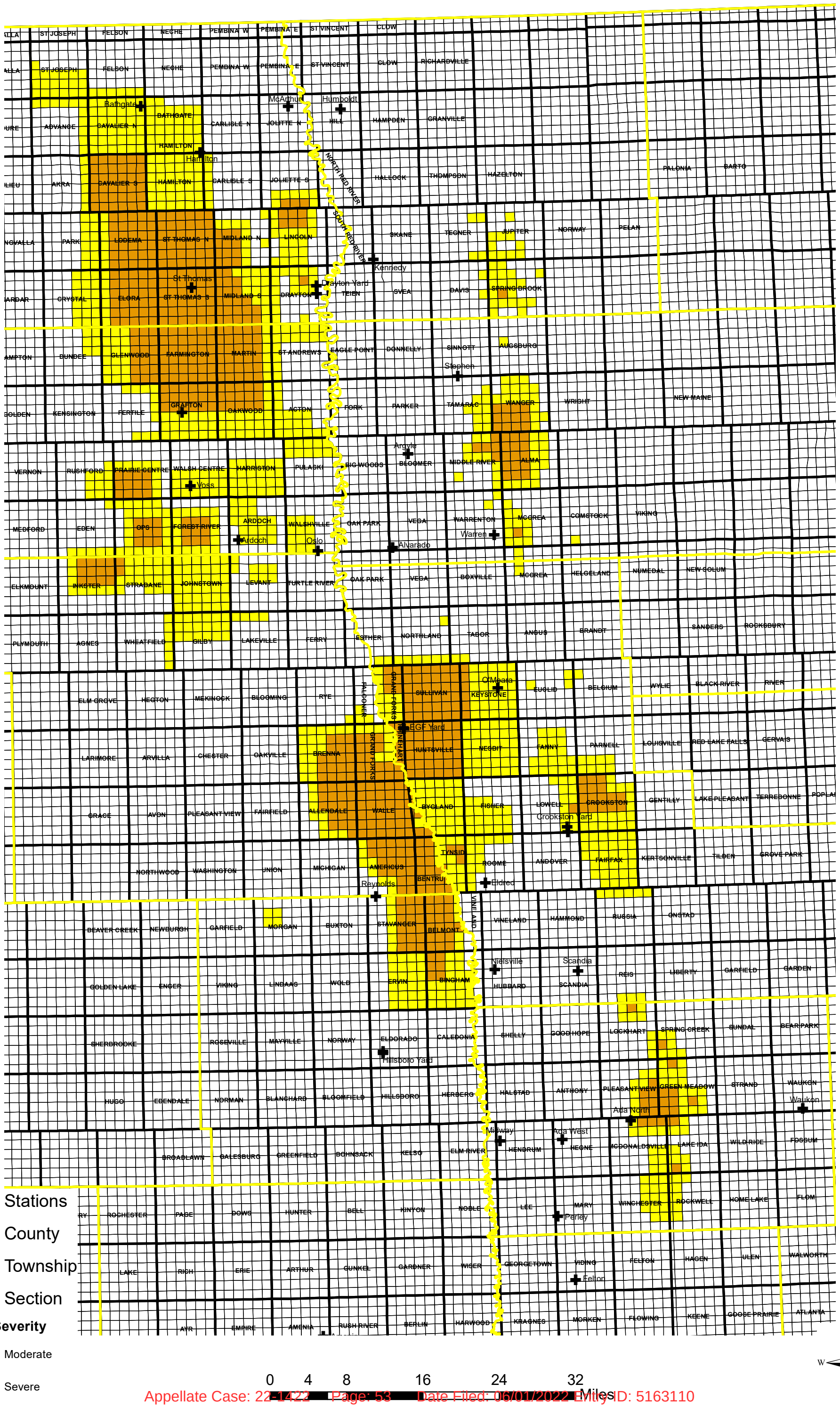
Chlorpyrifos Proposed Interim Decision
https://www.epa.gov/sites/default/files/2020-12/documents/chlorpyrifos_pid_signed_120320.pdf
pages 41-42.

The information contained in this document and its attachments makes clear the need for chlorpyrifos to control sugarbeet root maggot in sugarbeets.

Sugarbeet Root Maggot Severity
2020



Sugarbeet Root Maggot Severity
2021



United States Court of Appeals
For The Eighth Circuit
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June 01, 2022

Mr. Paul Martin Seby
GREENBERG & TRAURIG
Suite 3300
1144 15th Street
Denver, CO 80202

RE: 22-1422 RRVSG Assoc., et al v. Michael Regan, et al
22-1530 RRVSG Assoc., et al v. Michael Regan, et al

Dear Counsel:

The amicus curiae brief of the State of North Dakota has been filed. If you have not already done so, please complete and file an Appearance form. You can access the Appearance Form at www.ca8.uscourts.gov/all-forms.

Please note that Federal Rule of Appellate Procedure 29(g) provides that an amicus may only present oral argument by leave of court. If you wish to present oral argument, you need to submit a motion. Please note that if permission to present oral argument is granted, the court's usual practice is that the time granted to the amicus will be deducted from the time allotted to the party the amicus supports. You may wish to discuss this with the other attorneys before you submit your motion.

Michael E. Gans
Clerk of Court

CMD

Enclosure(s)

cc: Mr. Joseph Paul Bialke I
Ms. Ashley Boles
Ms. Kristen Lee Boyles
Ms. Sayler Anne Ault Fleming
Ms. Laura J. Glickman
Ms. Patti Ann Goldman
Ms. Kathleen Roth Heilman
Mr. Jeff P. Johnson
Mr. Joshua Michael Jones
Ms. Kara Kapke
Mr. Todd Kim

Ms. Rachel G. Lattimore
Mr. Nash E. Long III
Mr. Donald C. McLean
Ms. Erica Nicole Peterson
Mr. Brent A. Rosser
Mr. Dean John Sauer
Mr. Justin D. Smith
Ms. Martha R. Steincamp

District Court/Agency Case Number(s): EPA-HQ-OPP-2021-0523
EPA-HQ-OPP-2021-0523

EXHIBIT 24

USDA United States Department of Agriculture

Office of the Secretary
Washington, DC 20250

September 20, 2022

THE HONORABLE VICKY HARTZLER
U.S. House of Representatives
2235 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Hartzler:

Thank you for your letter of July 11, 2022, cosigned by your colleagues, in which you request the rescission of the Environmental Protection Agency's (EPA) August 18, 2021, final rule canceling all food uses of the organophosphate pesticide chlorpyrifos and in which you offer several questions for both EPA and the U.S. Department of Agriculture (USDA). I apologize for the delayed response.

USDA is committed to providing all U.S. farmers with a diverse "toolbox" for addressing pest management challenges. The composition of this toolbox will undoubtedly continue to expand and evolve over time. At present, the judicious use of pesticides continues to be an important tool for farmers—and one which is strictly regulated to ensure safety to applicators, consumers, and the environment. USDA vigorously supports continuous progress and improvements to food systems that support our health, environment, and economy.

I encourage you to look at USDA's Agriculture Innovation Agenda and the U.S. Agriculture Innovation Research Strategy, which describe some of the extraordinary achievements of U.S. agriculture and our forward-looking vision for continuing to increase agricultural productivity by 40% while cutting the environmental footprint of U.S. agriculture in half by 2050. This information is available at: https://www.usda.gov/aia.

USDA is strongly supportive of the EPA's pesticide regulatory and policymaking process, for both its scientific rigor and its commitment to integrity and transparency. Under U.S. law, the EPA evaluates not only the potential risks associated with pesticide use, but also balances those risks with the benefits derived from pesticide use in agriculture, as well as in public health, residential settings, and our parks, forests, and public lands. The EPA's deliberative scientific evaluation process ensures farmers' continued access to the safe tools and technologies that are necessary to providing Americans with an abundant and affordable food supply.

Regarding the recent regulatory actions on chlorpyrifos, we are coordinating closely with the EPA and agricultural stakeholders. While chlorpyrifos is a broad-spectrum organophosphate insecticide that has been a part of U.S. growers' toolbox for multiple decades, its use has declined in recent years, and alternative pest control methods are available in many crop production systems. We are actively working to identify additional tools to replace critical uses of chlorpyrifos that currently lack viable pest management alternatives, including those critical uses in Missouri.

The USDA also collaborates with states, universities, and growers to promote the development of integrated pest management (IPM) strategies that reduce the economic, environmental, and public health risks from pests and the methods used to control them in agricultural and natural resource environments. You can find more information about our efforts to support IPM at: https://www.usda.gov/oce/pest/integrated-pest-management.

In response to your specific questions, please see below:

Question 1. Did scientists at the USDA's Office of Pest Management Policy agree with EPA's decision to cancel all food tolerances of chlorpyrifos in 2021 under FFDCA?

> **Answer:** USDA-Pest Management Policy (OPMP) scientists believe EPA could retain certain chlorpyrifos uses that meet EPA's safety standard, based on the EPA's proposed interim decision (PID). USDA-OPMP scientists also presented arguments for why additional uses should be considered for retention. This is summarized in USDA-OPMP's comments submitted to EPA in response to the chlorpyrifos PID in March 2021: https://www.regulations.gov/comment/EPA-HQ-OPP-2008-0850-1101.

Question 2. What was USDA's level of involvement in this decision?

> **Answer:** USDA has no formal regulatory role over pesticide regulatory decisions, but instead, through OPMP, provides information to EPA for use and consideration in regulatory decision-making. In addition to our public comment submission, OPMP has been in regular contact with EPA to discuss the importance of chlorpyrifos.

Question 3. Was USDA briefed by DOJ and EPA regarding EPA's final rule canceling all food tolerances for chlorpyrifos, of which was the administration's response to the April 29, 2021, directive by the U.S. Court of Appeals for the Ninth Circuit?

> **Answer:** USDA was briefed by EPA but was not briefed by the Department of Justice.

Question 4. EPA recently requested voluntary cancellations under FIFRA from the registrants of chlorpyrifos. Voluntary cancellations occurred for all except the 11 uses that EPA deemed safe in its December 2020 PID for chlorpyrifos, including Missouri soybeans, alfalfa, and wheat. The registrant has requested EPA work with on sublabels for said 11 continued uses.

a. Are your agencies working to approve these 11 sublabels?

b. If so, what is the expected timeline for approval?

> **Answer:** USDA does not have a formal role in approving pesticide regulatory decisions. The decision to re-visit or potentially re-register labels with chlorpyrifos uses rests with EPA. We have and will, however, provide information to help inform EPA's decision,

including information on the benefits of chlorpyrifos to growers. We will work to make the case to follow the science and maintain safe use of chlorpyrifos for those 11 crops, and any others that might still be adjusted or refined to meet EPA's safety standard.

Question 5. Will you prioritize a way for chlorpyrifos use this growing season, given the chemistry has few viable and cost-effective alternatives?

Answer: As with any chemical uses determined to meet the safety standard, we will encourage EPA to allow for continued use.

Thank you for your letter, and I hope the information and responses I have provided are helpful. I would also like to welcome you to reach out directly to our Office of Pest Management Policy (kimberly.nesci@usda.gov or clayton.myers@usda.gov) which coordinates pest management and pesticide regulatory policy for the USDA. A similar response is being sent to your colleagues.

Sincerely,

THOMAS J. VILSACK
Secretary

CERTIFICATE OF SERVICE

I certify that on January 13, 2023, the foregoing Request for Hearing and Statement of Objections by Grower Petitioners was filed electronically using the EPA OALJ e-filing system; and served by U.S. Mail, First Class to the below addresses:

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/s/ Nash E. Long
Nash E. Long