

## **ESA SME Liaison to EPA OPP Report for November-December 2021/January 2022**

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During November, the Weed Science Society of America and the American Phytopathological Society SME Liaisons and I met via ZOOM for a meeting with Crop Life America staff to discuss our roles and interactions with the EPA Office of Pesticide Programs. As a result of this meeting we SMEs were able to establish communications with one another and decided we would like to meet sometime after February for a trip to DC. However, now our future plans are likely on hold as we weather a more intense storm of COVID infection rates owing to the emergence of the Omicron variant.

EPA OPP has continued its business issuing new policy proposals or edicts that have an interface with ESA constituent interests. I list the policy announcements most relevant to our member interest. I've denoted two bee news stories of interest. Also, I'm including some herbicide-related issues in case some of our members have Extension appointments that require a more general perspective on all pesticide technology in their interactions with growers and consumers. Although "herbicide" news is not transparently relevant to ESA member interests, indirectly it has importance because issues related to herbicides are conflated with insecticide issues as evident in public discourse.

### **Endangered Species Act Issues**

On January 5, 2022 EPA issued an announcement that a Federal interagency working (IWG) group is holding a public listening session on January 27, 2022 to hear stakeholder perspectives on improving the Endangered Species Act (ESA) section 7 consultation process for pesticide registration decisions. In particular the IWG is seeking public perspectives on three questions:

- How could pesticide mitigation measures for ESA species be adopted and implemented in a timely and effective manner?
- What are other priority actions the IWG should consider pursuing to improve the pesticide consultation process?
- What future opportunities, if any, should the IWG consider for stakeholder engagement?

Attendance for the meeting require registration, which is posted at URL <https://www.eventbrite.com/e/us-epa-public-meeting-on-endangered-species-pesticide-issues-tickets-222003437257>. This link for registration provides the details about the webinar meeting objectives and provides an opportunity to indicate whether an attendee would like to speak about the issues or just attend the meeting.

Subsequent to the announcement about a listening session, EPA on January 11, 2022 announced a reorientation of their policy regarding registering new pesticide active ingredients (AI). Moving forward and effective immediately, before registration decisions are made, EPA "will evaluate the potential effects of the AI on federally threatened or endangered (listed) species, and their designated critical habitats, and initiate ESA consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services), as appropriate." Part of the rationale for this policy change was to head off lawsuit problems when registering products. Notably, EPA had been doing retrospective endangered species hazard assessment on the products already registered in response to the "salmon lawsuits" of the early 2000s or on products requiring re-registration decisions. The announcement can be found at URL <https://www.epa.gov/newsreleases/epa-announces-endangered-species-act-protection-policy-new-pesticides>. The bottom of the announcement contains a link to further information about the policy and a Q&A document for download.

One item of interest if one is curious about how EPA has implement best management practices regarding protecting listed species under the ESA is the agency website called Bulletins Live Two at URL <https://www.epa.gov/endangered-species/bulletins-live-two-view-bulletins>. This website contains a map of locations of listed species and helps growers determine when their applications might occur during the time of year that a listed species is present.

### **Crop Groupings Changes Proposed**

On January 10, 2022, EPA opened “a 60-day comment period requesting public comments on the sixth proposed rule in an ongoing series of revisions to the pesticide crop grouping regulations. Crop groups are established when residue data for certain representative crops are used to establish pesticide tolerances for a group of crops that are botanically or taxonomically related. EPA sets these tolerances, which are the maximum amount of a pesticide allowed to remain in or on a food, as part of the process of regulating pesticides that may leave residues in food.” More details about the proposed changes are located at URL <https://www.epa.gov/pesticides/epa-proposes-rule-improve-several-pesticide-crop-groupings>.

### **Bees & Pesticides News**

On December 3, 2021, a California state superior court ruled that the insecticide sulfoxaflor can no longer be used on crops in the State. The petitioners represented by the Seattle based law firm Earth Justice (the same firm that “won” the salmon lawsuits in the early 2000s) claimed that the CA Department of Pesticide Regulation violated state environmental law when it approved the registration of the insecticide. FYI, sulfoxaflor targets the nicotinic acetylcholine receptor as do the neonicotinoid insecticides but is a new chemical class called sulfoximimes. Although sulfoxaflor has xylem system properties as the neonics, its interaction with the receptor is pharmacokinetically different. Furthermore, this insecticide was registered for use as a spray as opposed to a seed treatment or soil application.

On December 16, 2021 the Center for Food Safety and the Pesticide Action Network North America filed a lawsuit in the Northern District of California against the EPA. The complaint is seeking “declaratory and equitable relief” because EPA did not answer a 2017 petition to “close a regulatory loophole that allows seeds coated with systemic pesticides to evade the registration and labeling requirements of the Federal Insecticide, Fungicide, and Rodenticide Act.” The lawsuit states irreparable environmental harm if the loophole persists. Ironically, EPA’s finalized risk analysis for neonicotinoid coated seeds (three products of interest: imidacloprid, thiamethoxam and clothianidin) shows that use of treated seeds present the lowest risk to honey bees (other pollinator species are arguably more uncertain owing to harmonized regulatory testing requirements that do not presently include them).

### **Miscellaneous Human Health News**

On November 23, 2021 Senator Corey Booker’s office announced the “Protect America’s Children from Toxic Pesticide Act of 2021 (PACTPA) that would remove dangerous pesticides from farm use. According to Booker’s office press release, the “bill would protect farmworkers by ending the use of more than 100 toxic pesticides. The candidate pesticide groups are OP and neonicotinoid insecticides, and additionally paraquat herbicide was signaled out for its putative epidemiological relationship to Parkinson’s Disease.

### **Herbicide Issues of Interest to Extension Agents**

On January 11, 2022, EPA announced renewal of the registration for ENLIST herbicide products for a seven-year period. ENLIST (2,4-D) and ENLIST Duo (2,4-D plus glyphosate) were commercialized upon the first registrations in 2014 for use on 2,4-D resistant corn, cotton, and soybeans (i.e., the genetically modified cultivars). Details of the announcement are

located at URL <https://www.epa.gov/pesticides/epa-renews-enlist-product-registrations-new-control-measures-providing-growers-certainty>.

EPA on December 21, 2021 released summaries of dicamba herbicide related incident reports from the 2021 growing season. This news affects the soybean market and use of dicamba in association with the genetically modified dicamba resistant soybean and cotton cultivars has been highly controversial among growers since the commercial release of the cultivars owing to thousands of complaints of non-target crop damage from this highly volatile herbicide. The announcement and details are located at URL <https://www.epa.gov/pesticides/epa-releases-summary-dicamba-related-incident-reports-2021-growing-season>.