American Bird Conservancy * Beyond Pesticides * Beyond Toxics * Bird Conservation Network * Californians for Alternatives to Toxics * California Rural Legal Assistance Foundation * Center for Biological Diversity * Center for Food Safety * Defenders of Wildlife * Endangered Species Coalition * Friends of the Earth * Georgia Ornithological Society * Haereticus Environmental Laboratory * Island Watch Conservation Science * The Humane Society of the United States * Maryland Ornithological Society * Maryland Pesticide Education Network * Organic Consumers Association * Pesticide Action Network North America * Pollinator Stewardship Council, Inc. * Raptors Are The Solution * Southern Maryland Audubon Society * Tennessee Ornithological Society * Toxic Free NC * The Urban Wildlands Group * WildCare * Wildlife Center of Virginia

9 May 2016

The Honorable Gina McCarthy, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Mail Code 1101A
Washington, DC 20460

Dear Administrator McCarthy,

American Bird Conservancy and the undersigned groups respectfully request improvements to the Environmental Protection Agency (EPA) incident reporting system for wildlife sickened and killed by pesticides. We are concerned that the current system is ineffective for several reasons: absurdly high reporting triggers and thresholds, confusing data-submission portals, minimal public access to data, and a lack of coordination with other federal agencies. We applaud the EPA for the preliminary reforms underway, and urge the Agency to expedite the upgrades and consider additional measures.

The EPA Incident Data System was established to track the effects of pesticide use on people, animals, plants, and waterways. Given the vast universe of species and chemical combinations, incident reporting plays a critical role in bringing to light pesticide effects on birds and other non-target species. It serves as an important addition to the limited information provided by laboratory testing. Registrant-submitted tests on Mallard ducks and bobwhite quail, for example, often fail to illuminate pesticide impacts on other birds given the huge variation in avian vulnerabilities, ecology, and metabolic systems. The data from field-based incident reports can help guide decision-makers in determining necessary mitigation measures and best practices as well as future research needs. Documented sick and dead wildlife give EPA scientists and risk managers a clear window into the real-world impacts of chemical exposures on humans and wildlife, including effects on Threatened and Endangered species and the plant and animal populations that sustain them.

Moreover, as EPA increasingly makes use of modern scientific methods such as theoretical modeling and computational toxicology, incident reporting data provide a critical means of testing the actual performance of these new methods. They are an important component in the transition from animal testing and resource-intensive section 158 data requirements (40 CFR Part 158).

An effective incident reporting system will also provide clues on pesticide synergism. Single pesticides are rarely used alone. Many wildlife incidents involve pesticide mixtures or geographically proximate uses, which sometimes lead to more toxic combined impacts. Indeed, the Ninth Circuit Court

of Appeals recently revoked approval of the herbicide Enlist Duo, which contains both glyphosate and 2,4-d, because of its possible synergistic effects. A sophisticated incident reporting system will help reveal the impacts of multiple pesticides acting simultaneously.

Incident reporting is the follow-up to insufficient protection, inadequate registration data, and underfunded State Lead Agencies not required by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to report pesticide incidents to EPA. The current incident reporting regime is undermined by the following factors:

- Unrealistically high threshold numbers of dead animals needed to trigger reporting requirements under FIFRA 6(a)2, such that very few wildlife incidents are ever recorded;
- the absence of a user-friendly go-to reporting portal;
- the lack of public access to data without time- and resource- intensive Freedom of Information Act requests; and
- the missed opportunity to coordinate EPA's pesticide incident system with that from other agencies.

We are encouraged that EPA is addressing these shortfalls through an intra-agency incident work group that has been meeting for the past two years to bring incidents efforts under one umbrella and to prioritize needs. In addition, the Office of Pesticide Program's federal advisory committee – the Pesticide Program Dialogue Committee – in May 2015 initiated an incident reporting work group comprised of EPA staff, other federal and state entities, and representatives from industry and public interest organizations including wildlife rehabilitation professionals. ABC and the other signatories below support these efforts, but note that much remains to be accomplished. We would appreciate your response to the following recommendations:

1. **Fix FIFRA 6(a)(2).**

As EPA recognizes, FIFRA 6(a)2 is out-of-date in various respects, including by requiring registrants to submit their incident reports on paper -- creating inefficiency and discouraging filing. We understand that EPA is working to resolve this problem, and we urge the Agency to scrap other unworkable and outdated aspects as well.

FIFRA 6(a)(2)'s principal and glaring fault are the threshold numbers of dead animals of a single species that must be found in one location to trigger a regulatory reporting requirement. The current thresholds are so absurdly high that a cynic might suppose they were drafted by the pesticide industry to discourage reporting on pesticides' negative impacts. They include:

- For herding mammals, no specific reports required unless at least 50 mammals of a species are killed;
- For birds, no specific reports required unless 200 of a "flocking" species, 50 songbirds, or 5 raptors are killed;
- For fish, no specific reports required unless 1,000 of a schooling species are killed;
- For bees, no specific reports required no matter how many are found dead; and
- For domestic animals or pets, no specific reports required.

These thresholds lead to obvious results: very few incidents are ever reported. Moreover, what manufacturers and/or applicators do report depends on whether they actually look, and when, and how. Even good-faith searches for animal carcasses may miss those that are hidden in the brush, where they rapidly decompose or are picked apart by scavengers. And the time-lag effect of many rodenticides and systemic chemicals means that affected animals disperse and die far from the site of application and no one ever sees their decomposing corpses in farm fields and forests. Accordingly, most wildlife pesticide incidents go unreported. [*See, e.g.,* Mineau 2004. *Birds and Pesticides: Are Pesticide Regulatory Decisions Consistent with the Protection Afforded Migratory Bird Species Under the Migratory Bird Treaty Act?* William & Mary Environmental Law and Policy Review.] Finding and testing a *single* poisoned animal (especially an ESA-listed animal) is significant and can offer valuable data.

Under the current regime, for incidents that involve fewer than the threshold numbers, registrants need only list the product and state that a mortality occurred, without even specifying what type of organism was affected or providing any other details. Registrants can accumulate these incidents for 90 days and then wait another 60 days before submitting. EPA leadership acknowledges that the minimalist data found in these "aggregate reports" are not useful or informative.

EPA receives roughly 50 to 100 of these aggregate reports for birds, mammals, and other wildlife every year. There is much to learn from these wildlife and domestic animal kills, but without better reporting requirements, the government remains in the dark. We understand that EPA staff scientists as well as senior managers would like to overhaul the system to provide a better understanding of pesticide impacts on wildlife and people.

In an attempt to gather more information on bee kills, in July 2013 the former OPP director directed specific neonicotinoid registrants to provide full reports on *any* bee kills. *See* http://www.epa.gov/sites/production/files/2013-11/documents/bee-july2013-letter.pdf While a positive step, this letter was not nearly enough to fix the aggregate reporting system under FIFRA 6(a)(2). Aggregate reporting needs to be abolished for *all* non-target animals.

The current FIFRA 6(a)(2) regulations were promulgated in 1997. Earlier versions (1978, 1979, 1985, 1992) generally focused more on what did *not* have to be reported. None offers a model of clear and predictable regulation. Given how few poisoned animals are now found and reported, and what a wealth of data each one may represent, we propose that the current wildlife thresholds be jettisoned.

For aquatic and terrestrial invertebrates, moreover, we propose that EPA consider an additional reporting category: the *absence* of expected biota. The ecological importance of invertebrates is in inverse proportion to their size. They pollinate flowering plants, filter the waterways, compost and turn the soil, and provide critical nutrition for birds and other wildlife. Yet invertebrates rarely get counted in their dead or dying state. If a farmer who regularly tests surface waters near his organic fields finds that the waterways have been depleted of aquatic invertebrates, and test high for pesticide active ingredients, EPA databases should capture that information. These findings would offer one more piece of important information among the many variables that risk managers could weigh in their assessments.

2. Enable public access to data, and build a better portal for submission and dissemination of incident information.

We urge EPA to build a more user-friendly and transparent system that welcomes both the submission of incidents and the sharing of that data with scientists, NGOs, and other members of the public.

Deaths of frogs or owls or pronghorns need not be industry or state secrets. A robust public discourse on pesticide-caused wildlife injury and mortality would be facilitated by a more transparent, interactive, user-friendly system. The public should not have to go through the time-consuming, resource-intensive Freedom of Information Act process for wildlife necropsy reports. EPA has recently reviewed all of the wildlife incidents in the Ecological Incident Information System (EIIS) to scrub any confidential business information (CBI) or personal identifiable information (PII), and this should serve as a prelude to the creation of a publicly accessible reporting system.

The flow of information into the Agency also needs improvement in the form of a user-friendly go-to portal for submission of incident data on birds and other wildlife, pets, domestic animals, pollinators, plants, and humans. Few people know what to do when they find sick or dead organisms. EPA funds the relatively obscure National Pesticide Information Center (NPIC) portal, but it is not clear that NPIC is adequately fulfilling EPA's needs. *See* http://npic.orst.edu/incidents.html.

Those who do manage to find NPIC confront assorted suggestions on how to proceed. The Reporting Pesticide Incidents page directs people to start with their state agency, but that appears to be where many people stop. Many states lack the resources to track and share incident records, let alone investigate, conduct testing, enforce pesticide labels, etc. The website gives the impression that reporting pesticide incidents to EPA is a relatively low-priority secondary measure, something extra to do if you want, and the result is that only limited reports make it to EPA via states or through NPIC. Yet NPIC serves as the agency's primary incident reporting portal.

EPA now has its own incident reporting pages, as well. *See* https://www.epa.gov/pesticide-incidents/report-pesticide-incidents-involving-wildlife-or-environment The site includes a bulleted list of suggestions covering data collection by NPIC; when to contact state agencies; and information on fish and game authorities. Buried near the bottom of the list are options to submit incident information to EPA. The website assumes knowledge about pesticide laws and an understanding of which incidents are violations. The tone ranges from agnosticism about submissions to actively warding them off, highlighting **"**What Not to Report."

EPA's website also includes a page describing Common Causes of Pesticide Incidents, describing how people inadvertently expose themselves or pets or livestock to chemicals by failing to follow label instructions or by other careless behavior. *See*, https://www.epa.gov/pesticide-incidents/common-causes-pesticide-incidents. Rather than acknowledge that many pesticides are inherently dangerous when applied as directed, the site gives the false impression that poisonings are generally user-blameworthy, potentially further discouraging reporting.

We believe that EPA should welcome incoming data and explain why it is useful, with a statement such as: *If you have encountered a poisoned animal or carcass, this is potentially valuable data that can aid EPA in assessing pesticide risks. Agency scientists appreciate any details you can provide to help us determine how chemicals are affecting wildlife and people in the real world.*

3. Coordinate incident reporting among agencies.

EPA should accelerate efforts to coordinate its Incident Data System (IDS) with injury-and-mortality data collected by other agencies. EPA's IDS database is just one of several federal repositories for incident information.

Fish and Wildlife Service has a newly-launched Injury and Mortality Reporting System (IMRS), originally designed mainly for eagles in response to wind energy litigation and now including incidents involving other bird species and also a generic category for bats. Inter-agency coordination of data repositories is one of the goals envisioned in the Migratory Bird Treaty Act draft MOU between EPA and FWS. *See* http://archive.epa.gov/pesticides/news/web/html/birdtreaty.html. Other wildlife incident databases that could be coordinated with IDS are the US Geological Survey's Contaminant Exposure and Effects – Terrestrial Vertebrates Database (http://www.pwrc.usgs.gov/contaminants-online/pages/CEETV/CEETVintro.htm) and the National Wildlife Health Center's Wildlife Health Information Sharing Partnership – event reporting system (WHISPers) databases (https://www.nwhc.usgs.gov/whispers/). There may also be opportunities to coordinate incident information with other parts of the government, such as the Coast Guard, Department of Energy, Department of Defense, National Oceanic and Atmospheric Administration, and National Park Service, as well as international partners. Incident records can also be coordinated with state and county agencies, non-governmental organizations, veterinarians, animal rescue facilities, poison-control hotlines, and private sector entities.

EPA has made an important first step in integrating its in-house databases, but even better would be to pool EPA's data with that captured by other entities.

# # # #

The signatories below greatly appreciate EPA's efforts in upgrading the incident reporting system and capacity, and offer to work with EPA in any way we can to expedite the process. We would be grateful for a response from the Agency by the end of June, 2016. Our point of contact is Cynthia Palmer, Director, Pesticides Science and Regulation, at the American Bird Conservancy, cpalmer@abcbirds.org.

Thank you for your consideration of these comments.

Sincerely,

American Bird Conservancy
Allamakee County Protectors
Audubon of Kansas
Baltimore Bird Club
Beyond Pesticides
Beyond Toxics
Bird Conservation Network
Californians for Alternatives to Toxics
California Rural Legal Assistance Foundation
Center for Biological Diversity
Center for Food Safety
Central Maryland Beekeepers Association
Chesapeake Wildlife Heritage
Climate Mobilization - Denver Chapter
Conservation Congress
Coulee Region Audubon
Defenders of Wildlife
Endangered Species Coalition
Evergreen Audubon
Friends of Blackwater
Friends of Dyke Marsh
Friends of the Earth
Friends of Tucson's Birthplace
Georgia Ornithological Society
Haereticus Environmental Laboratory
Harford Bird Club
Hawk Mountain Sanctuary Association
High Country Audubon Society
Island Watch Conservation Science
The Humane Society of the United States
Jayhawk Audubon Society
Kettle Range Conservation Group
Klamath Forest Alliance
Klamath Siskiyou Wildlands Center
Maryland Ornithological Society
Maryland Pesticide Education Network
Monmouth County (NJ) Audubon Society
Old Mill Honey Co.
Organic Consumers Association
People and Pollinators Action Network
Peregrine Audubon Society
Pesticide Action Network North America
Pesticide Free Zone
Pollinator Stewardship Council, Inc.
Raptors Are The Solution
Regeneration International
Researchers Implementing Conservation Action
Roanoke Valley Bird Club
Rockbridge Bird Club
The Rodenticide Free Project of West Marin
Safe Passage Great Lakes
San Diego Audubon Society
Santa Clara Valley Audubon Society
Sequoia ForestKeeper®
Southeast Volusia Audubon Society
Southern Maryland Audubon Society
St. Lucie Audubon Society
Tennessee Ornithological Society
Topeka Audubon Society
Toxic Free NC
Tucson Audubon Society
Turtle Island Restoration Network
Umpqua Watersheds, Inc.
The Urban Wildlands Group
Washington Crossing Audubon Society
Western Nebraska Resources Council
White Mountain Audubon Society
WildCare
WildLands Defense
Wildlife Center of Virginia

cc: Jack Housenger, Director, Office of Pesticide Programs