May 14, 2024

Michael Regan, EPA Administrator
Michal Freedhoff, Assistant Administrator
for Chemical Safety and Pollution Prevention
Ed Messina, Director for the
Office of Pesticide Programs
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: DCPA Warning and Suspension/Cancellation

Dear Administrator Regan, Assistant Administrator Freedhoff, and Director Messina,

The undersigned farmworker and public health organizations write today to urgently request that EPA immediately suspend the registration and use of Dimethyl Tetrachloroterephthalate (DCPA) and begin cancellation procedures. On behalf of our members and supporters, many of whom are farmworkers that have exposure risks from DCPA, we demand that EPA do more than issue warnings that put the burden on those with the least power and instead immediately use its authority under FIFRA to curtail the use of DCPA in agriculture. Given the "serious, permanent, and irreversible health risks" associated with DCPA,[1] especially to pregnant people and their developing babies, DCPA meets the FIFRA standard for emergency suspension pending cancellation.

DCPA poses a serious risk of harm to humans, and likely to other species. As EPA states in its latest letter to AMVAC, manufacturer of Dacthal (DCPA), data from the comparative thyroid assay (CTA) showed a very low dose causes adverse effects in rat fetuses, lower than those that affect the pregnant rats themselves.[2] Fetal thyroid disruptions in humans are linked to low birth weight, impaired brain development, decreased IQ, and impaired motor skills in life. Extrapolated to humans, this means that a pregnant person could be exposed to DCPA without experiencing *any* effects, while causing significant and lifelong harm to a developing fetus. DCPA is also classified as a possible human carcinogen, based on animal tumor studies. Because the CTA study showed impacts to rats, it is reasonable to assume that other mammals beyond humans are being harmed by DCPA, including threatened and endangered mammals.

The undersigned organizations acknowledge and appreciate EPA's steps so far in releasing its human health occupational and residential risk assessment for the registration review of DCPA for early public comment,[3] and for issuing a rare warning given the grave findings of that risk assessment.[4] EPA also published a letter to AMVAC from March 27, 2024.[5] This letter rejects AMVAC's proposed mitigation because it would not adequately mitigate risks to pesticide handlers

[1] EPA News Release, EPA warns farmworkers about risks of Dacthal (Apr. 1, 2024), https://www.epa.gov/newsreleases/epa-warns-farmworkers-about-risks-dacthal.
[2] Letter from EPA to AMVAC, dated March 27, 2024. EPA-HQ-OPP-2011-0374-0112.
[3] DCPA Registration Review Docket, https://www.regulations.gov/docket/EPA-HQ-OPP-2011-0374.
[4] EPA News Release, EPA warns farmworkers about risks of Dacthal (Apr. 1, 2024), https://www.epa.gov/newsreleases/epa-warns-farmworkers-about-risks-dacthal.
[5] Letter from EPA to AMVAC, dated March 27, 2024. EPA-HQ-OPP-2011-0374-0112.

and those exposed post-application. *Id.* In part, the mitigation identified by AMVAC would not be feasible, given the agronomic realities of pesticide handlers and those working in crop fields with transplants. The undersigned organizations strongly agree with EPA's conclusions that the proposed mitigation is not practicable or workable, so would not be expected to be followed; even then, these mitigation measures would not eliminate the unreasonable adverse risks to human health.

Additionally, it appears that the re-entry restrictions suggested by AMVAC would not be protective in all cases, as EPA's own risk assessment found many scenarios where risks of concern continued 20-31 days post-application.[6] Finally, EPA's letter does not acknowledge that AMVAC's proposed 150-foot buffer between treated and residential areas does not fully account for or mitigate harm to bystander workers and residents. EPA's occupational and residential assessment identified risks for people exposed to off-site drift up to and *beyond 300 feet* from the field edge for all typical use scenarios. *Id.* at 17. This provides yet another reason why EPA is correct to reject AMVAC's proposed mitigation, because there is apparently no amount of feasible mitigation that can prevent unreasonable adverse effects from DCPA.

Legal Standard

EPA is tasked with regulating pesticides in the United States, pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136 et seq. In accordance with FIFRA, EPA can register a pesticide only upon determining that it will cause no unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice. *Id*. § 136a(c)(5)(A)-(D). To remain registered, pesticides must continue to meet this FIFRA safety standard. To ensure this, EPA is required to review pesticide registrations every fifteen years. *Id*. § 136a(g)(1)(A). Registration review is intended to assess the risks that a pesticide may pose to human health and the environment in the light of new scientific information, enhanced ability to detect risks, changes in pesticide policy, and alterations in pesticide usage practices, since the pesticide was last registered.[7] If a product "fails to satisfy the FIFRA standard for registration, the product's registration may be subject to cancellation or other remedies under FIFRA."[8] EPA has the authority to call in additional data from registrants during the registration review process or if it determines additional data are necessary for a current registration.[9] Registrants are also under a continuing obligation to provide EPA with any new data that arises regarding a pesticides ability to cause unreasonable adverse effects.[10]

If EPA finds that a registered pesticide has "unreasonable adverse effects on the environment" when "used in accordance with widespread and commonly recognized practice," then the agency

[6] DCPA Occupational and Residential Exposure Assessment for the Registration Review of DCPA (May 18, 2023), 12-16, https://www.regulations.gov/document/EPA-HQ-OPP-2011-0374-0081.
[7] *See* ENV'T PROT. AGENCY, *Registration Review Process*, https://www.epa.gov/pesticide-reevaluation/registration-review-process.
[8] 40 CFR § 155.40(a).
[9] 7 U.S.C. § 136a(c)(2); 40 C.F.R. § 155.48.
[10] 7 U.S.C. § 136d(a)(2); 40 C.F.R. § 159.152.

may undertake cancellation proceedings.[11] Any interested person may petition EPA to cancel a registered pesticide product.[12]

Relatedly, EPA may suspend the registration of a pesticide immediately if EPA determines it is necessary "to prevent an imminent hazard during the time required for cancellation . . ."[13] An imminent hazard exists if during the time required for cancellation the continued use of a pesticide would (1) "be likely to result in unreasonable adverse effects on the environment" or (2) "involve unreasonable hazard to the survival of a species declared endangered or threatened" by the Endangered Species Act (ESA).[14] EPA may issue an emergency suspension order before issuing a notice of intent to cancel the registration.[15] When a pesticide is suspended, EPA may also issue a "stop sale, use, or removal" order to prevent further sale or use of that pesticide.[16]

History of DCPA Registration

DCPA was first registered in 1958, with a Reregistration Eligibility Decision (RED) issued in 1998, and tolerances reassessed in 2005.[17] At the time DCPA's registration review docket was opened in 2011, it was registered for use on crops like corn, soybean, cole crops, cucurbits, peppers, herbs, as well as non-crop uses like non-residential turf and ornamentals. The most recent nationwide ecological risk assessment for DCPA was conducted in 1998 to support the RED. *Id.* at 4. Only non-turf uses were determined to be eligible for reregistration, as EPA could not make an eligibility determination for DCPA used on turf due to acute and chronic risk concerns for a range of species. Although EPA deferred the decision as to turf uses, voluntary cancellation of residential uses obviated the need. Despite adopting several mitigation measures in the RED, EPA subsequently learned that not all registrations and labels reflect the required risk management measures. *Id.* at 5. The most recent ecological assessment is species-specific to the California red-legged frog (2009) due to litigation by the Center for Biological Diversity. Despite another lawsuit in 2011 by the Center and the Pesticide Action Network North America for EPA's failure to conduct an ESA assessment and consultation for DCPA (among 350 pesticides), EPA has never completed an ecological risk assessment that would support a complete ESA determination or consultation. *Id.* at 5.

As to human health, prior to the recent release of the occupational and residential human health risk assessment,[18] the last human health risk assessment was also conducted in 1998 to support the RED. Per EPA's final work plan in 2011, it anticipated completing draft risk assessments by 2016, with a proposed registration review decision in 2016 and a final decision in 2017. It is now 2024 and EPA is far behind this schedule. Despite a Data Call-In issued in 2013, the registrant failed to supply critical data on thyroid toxicity of DCPA. EPA's initial assays for DCPA through its Endocrine Disruptor Screening Program provided further evidence in 2015 of the need

[11] 7 U.S.C. § 136d(b).
[12] 40 C.F.R. § 154.10; *Wash. Toxics Coal. v. EPA*, 413 F.3d 1024, 1033 (9th Cir. 2005).
[13] 7 U.S.C. § 136d(c)(1).
[14] *Id.* § 136(l).
[15] *Id.* § 136d(c)(3).
[16] *Id.* § 136k(a).
[17] EPA, DCPA Final Work Plan: Registration Review (Nov. 2011), https://www.regulations.gov/document/EPA-HQ-OPP-2011-0374-0008.
[18] *Supra* note 6.

for additional data from a special thyroid assay (the CTA study already requested in 2013).[19] It was not until 2022 that EPA issued a notice of intent to suspend DCPA due to this missing data.[20] The suspension was effective on August 22, 2023, and lifted November 2, 2023 after the registrant finally supplied the missing data.[21]

Need for Immediate Emergency Suspension, Stop Use/Sale, and Cancellation

Given the evidence already before EPA,[22] DCPA poses an unreasonable risk to the environment that cannot be mitigated away. Even with the unknowns of impacts to wildlife—especially threatened and endangered species—the human health impacts to pesticide handlers and farmworkers alone are enough to require cancellation of this toxic and unnecessary pesticide. Further, as noted above, the CTA study on rats also provides a reasonable assumption of adverse effects to other mammals, including threatened and endangered mammalian species. Because cancellation takes time, even years,[23] to complete, EPA must also immediately suspend all uses of DCPA given its imminent hazard during the time required for cancellation.[24] DCPA is creating an unreasonable risk to humans and the environment *now*, as its use every season risks exposure to thousands of farmworkers and their families. These exposed workers may not even experience the harm until it manifests later in endocrine impacts and severe harms to developing fetuses. Because the summer planting season is upon us, EPA should use its emergency suspension and stop sale and use powers without further delay. For these reasons, the undersigned demand that EPA immediately suspend DCPA, issue a stop sale and use order, and initiate cancellation of all DCPA uses.

Signed,

Alianza Nacional de Campesinas
Farmworkers Association of Florida
Environmental Protection Network
California Rural Legal Assistance Foundation
Learning Disabilities Association of America
Toxic Free NC
Center for Food Safety
Pesticide Action Network North America
Green America

[19] *Id*.
[20] EPA, Pesticide Product Registration: Dimethyl Tetrachloroterephthalate; Suspension (Apr. 27, 2022), https://www.regulations.gov/document/EPA-HQ-OPP-2011-0374-0012.
[21] EPA, Letter re: DCPA Final Order of Suspension Letter (Aug. 29, 2023); EPA, Letter re: Determination of Compliance with FIFRA Section 3(c)(2)(B) for GDCI-078701-1140 (Nov. 2, 2023).
[22] *See* Comments submitted by Center for Food Safety, EPA-HQ-OPP-2011-0374-0101; Environmental Protection Network, EPA-HQ-OPP-2011-0374-0096; Environmental Working Group, EPA-HQ-OPP-2011-0374-0100; the Endocrine Society, EPA-HQ-OPP-2011-0374-0094; and Earthjustice, EPA-HQ-OPP-2011-0374-0103, incorporated here by reference. *See also* EPA's own DCPA Occupational and Residential Exposure Assessment for the Registration Review of DCPA, *supra* note 6.
[23] *Ellis v. Housenger*, 252 F. Supp. 3d 800, 806 (citing *Love v. Thomas*, 858 F.2d 1347, 1350 (9th Cir. 1988), cert. denied, 490 U.S. 1035 (1989)).
[24] 7 U.S.C. §§ 136d(c)(1); 136d(c)(3); 136k(a).