

# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR  
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September 23, 2016

The Honorable Gina McCarthy  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Dear Administrator McCarthy:

The Committee on Homeland Security and Governmental Affairs is examining the effects of the Environmental Protection Agency's (EPA) regulations on farmers and ranchers. The EPA recently released a draft risk assessment that recommended increasing restrictions on atrazine, a commonly used herbicide.<sup>1</sup> Many farmers are concerned that if the EPA reduces the allowable levels of atrazine, farming costs will increase and crop yields will decrease.<sup>2</sup> With these concerns in mind, I write to request information about the EPA's registration process for herbicides and pesticides.

According to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), all pesticides to be sold or distributed in the U.S. must be registered with the EPA, which regulates the level of appropriate pesticide use to prevent undue consequences on the environment.<sup>3</sup> According to FIFRA and federal regulations for Registration Review, the EPA conducts registration reviews of herbicides and pesticides, such as atrazine, every 15 years.<sup>4</sup> In order to maintain its registration, "the pesticide product must perform its intended function without unreasonable adverse effects on the environment."<sup>5</sup> In its most recent assessment, the EPA reportedly recommended significantly reducing atrazine levels compared to what is currently deemed as acceptable.<sup>6</sup> Many stakeholders believe that this reduction will "effectively ban the use of atrazine."<sup>7</sup>

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<sup>1</sup> Notice of Availability, *Draft Ecological Risk Assessments: Atrazine, Simazine, and Propazine Registration Review* (June 6, 2016), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2015-0794-0003>; see also Rick Barrett, *Farm Groups Fighting EPA on Atrazine*, MILWAUKEE J. SENTINEL, Sept. 12, 2016, <http://www.jsonline.com/story/money/business/2016/09/12/farm-groups-fighting-epa-atrazine/90284056/>.

<sup>2</sup> Wis. Corn Growers Assoc., *Wisconsin Ag Groups Urge Farmers to Fight EPA on Atrazine Ban* (Sept. 12, 2016), <http://wicorn.org/ag-groups-fight-epa-atrazine-ban/>.

<sup>3</sup> 7 U.S.C. § 136a(g) (2007).

<sup>4</sup> *Id.*; see also 40 C.F.R. § 155.40 (2016).

<sup>5</sup> Notice of Availability, *supra* note 1.

<sup>6</sup> Wis. Corn Growers Assoc., *supra* note 2.

<sup>7</sup> *Id.*

On August 17, 2016, I convened a field hearing of the Committee in Dubuque, Iowa, to discuss the effect of federal regulations on the agriculture industry.<sup>8</sup> At the hearing I heard from Jim Zimmerman, a Wisconsin farmer who grows corn, soybeans, and wheat on 2,700 acres.<sup>9</sup> Mr. Zimmerman raised concerns about the EPA's potential restriction on atrazine and the effects that this restriction will have on the farming industry. He testified that "[a]trazine is the most widely used herbicide in conservation tillage systems. Without atrazine, farmers would have to use higher quantities of other herbicides that are less effective while increasing tillage and threatening soil health and nutrients."<sup>10</sup>

Mr. Zimmerman also questioned the EPA's most recent assessment of atrazine and stated that "more than 7,000 scientific studies have been conducted on the safety of [atrazine] to both the environment and to humans. The evidence overwhelmingly confirms atrazine is safe."<sup>11</sup> Other Wisconsin agricultural stakeholders support these sentiments. Bill Gnatzig, the president of the Wisconsin Pork Association, argued that the "EPA has arbitrarily discounted 7,000 rigorous, high-quality scientific studies while compromising its own high standards."<sup>12</sup>

In addition, Wisconsin agriculture groups have expressed concerns about the costs associated with the EPA's recommendations on atrazine. According to Mr. Gnatzig, "[s]tudies suggest farming without atrazine could cost corn farmers up to \$30-59 per acre in yield loss and added tillage, while negatively impacting water and nutrient management, which are key concerns of our state's pork producers."<sup>13</sup>

The EPA must conduct transparent and objective scientific studies when reviewing herbicides and pesticides. Farmers in Wisconsin and across the country deserve to know what factors the EPA considers when deciding whether to restrict farmers' access to vital agricultural tools. In order to assist the Committee in better understanding the EPA's registration of herbicides and pesticides, I ask that you please provide the following information and materials:

1. When conducting a registration review, how does the EPA determine which studies and/or risk assessments it will use to base its own draft risk assessment for herbicides including, but not limited to, atrazine?
2. FIFRA defines unreasonable adverse effects on the environment as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide . . ."<sup>14</sup> Did the EPA conduct such an analysis taking into account the economic, social, and environmental costs and benefits when drafting its assessment for atrazine? If so, please produce this analysis.

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<sup>8</sup> *From Crop to Craft Beer: Federal Regulation's Impact on America's Food and Agriculture: Hearing Before the S. Comm. on Homeland Security & Gov't Affairs*, 114<sup>th</sup> Cong. (2016) [hereinafter *Hearing*].

<sup>9</sup> *Id.* at 17.

<sup>10</sup> *Id.* at 18-19.

<sup>11</sup> *Id.* at 19.

<sup>12</sup> Wis. Corn Growers Assoc., *supra* note 2.

<sup>13</sup> *Id.*

<sup>14</sup> 7 U.S.C. § 136(bb) (1996).

3. Is the EPA concerned that increased restrictions on atrazine will result in “higher quantities of other herbicides that are less effective while increasing tillage and threatening soil health and nutrients”?<sup>15</sup> Please explain.
4. Is the EPA concerned that increased restrictions on atrazine will have an adverse effect on water and nutrient management?<sup>16</sup> Please explain.
5. Has the EPA convened any stakeholders meetings or conducted any similar outreach to the affected community as a part of its assessment regarding atrazine? If so, please provide a detailed list with dates and locations of those meetings.
6. According to recent reports, the EPA is currently in the process of reviewing another commonly used herbicide, glyphosate.<sup>17</sup> On April 29, 2016, the EPA reportedly posted a risk analysis of glyphosate on its website prepared by the EPA’s Cancer Assessment Review Committee (CARC). The report found that glyphosate was “not likely to be carcinogenic to humans.”<sup>18</sup> Just days later, the EPA apparently deleted the report from its website because the EPA claimed the assessment was “preliminary” and published “inadvertently”—although the word “FINAL” was printed on each page of the report.<sup>19</sup> Then, on September 16, 2016, the EPA released a report from its Pesticide Programs that found that “[t]he available data at this time do not support a carcinogenic process for glyphosate.”<sup>20</sup>
  - a. How will the EPA’s findings in the CARC report and the Pesticides Programs report inform the Registration Review for Glyphosate? Please explain.
  - b. When will the EPA complete its Registration Review of Glyphosate?

Please provide this material as soon as possible but no later than 5:00 p.m. on October 7, 2016. When delivering production sets, please produce to Majority staff in room 340 of the Dirksen Senate Office Building and to Minority staff in room 613 of the Hart Senate Office Building.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency and economy of operations of all branches of the Government.”<sup>21</sup> Additionally, S. Res. 73 (114th Congress) authorize the Committee to examine “the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal

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<sup>15</sup> Hearing, *supra* note 8, at 18-19.

<sup>16</sup> Wis. Corn Growers Assoc., *supra* note 2.

<sup>17</sup> Jenny Hopkinson, *EPA’s Glyphosate Report Now a Spring Thing (Maybe)*, POLITICO (Sept. 14, 2016), <http://www.politico.com/tipsheets/morning-agriculture/2016/09/epas-glyphosate-report-now-a-spring-thing-maybe-216316>.

<sup>18</sup> P.J. Huffstutter, *EPA Takes Offline Report that Says Glyphosate not Likely Carcinogenic*, REUTERS (May 2, 2016), <http://www.reuters.com/article/us-usa-glyphosate-epa-idUSKCN0XU01K>.

<sup>19</sup> *Id.*

<sup>20</sup> EPA’s Office of Pesticide Programs, *Glyphosate Issue Paper: Evaluation of Carcinogenic Potential* at 140 (2016).

<sup>21</sup> S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

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regulatory policies and programs.”<sup>22</sup> For purposes of responding to this request, please refer to the definitions and instructions in the enclosure.

If you have any questions about this request, please contact me or have your staff contact Scott Wittmann of the Committee staff at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

Enclosure

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<sup>22</sup> S. Res. 73 § 12, 114th Cong. (2015).

**Instructions for Responding to a Committee Request**  
**Committee on Homeland Security and Governmental Affairs**  
**United States Senate**  
**114th Congress**

**A. Responding to a Request for Documents**

1. In complying with the Committee's request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and .tif file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

## Instructions for Responding to a Committee Request

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (".pdf") format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
  - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
  7. Documents produced in response to the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
  8. When producing documents, identify the paragraph in the Committee's schedule to which the documents respond.
  9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
  10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
  11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
  12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
  13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

## **Instructions for Responding to a Committee Request**

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **B. Responding to Interrogatories or a Request for Information**

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.

## Instructions for Responding to a Committee Request

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.



## Instructions for Responding to a Committee Request

### C. Definitions

1. The term "document" in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms "and" and "or" in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify" in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

Instructions for Responding to a Committee Request

6. The terms "referring" or "relating" in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term "employee" in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms "you" and "your" in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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