



September 23, 2024

Jake Li  
Deputy Assistant Administrator  
Office of Chemical Safety and Pollution Prevention  
Environmental Protection Agency  
10201 Constitution Ave NW  
Washington, DC 20004

Docket Number: EPA-HQ-OPP-2024-0299

*Draft Insecticide Strategy to Reduce Exposure of Federally Listed Endangered and Threatened Species and Designated Critical Habitats from the Use of Conventional Agricultural Insecticides from the Use of Conventional Agricultural Insecticides.*

Dear Mr. Li:

The National Corn Growers Association (NCGA) appreciates the opportunity to comment on the *Draft Insecticide Strategy to Reduce Exposure of Federally Listed Endangered and Threatened Species and Designated Critical Habitats from the Use of Conventional Agricultural Insecticides from the Use of Conventional Agricultural Insecticides (Insecticide Strategy, DIS or Strategy)*. Founded in 1957, NCGA represents more than 36,000 dues-paying corn growers in all 50 states and the interests of more than 300,000 farmers who contribute through corn checkoff programs in their states. NCGA and its affiliated associations in 27 states work together to help protect and advance corn growers' interests.

NCGA acknowledges the Environmental Protection Agency's (EPA) legal requirements to meet its obligations under the Endangered Species Act (ESA) and reduce exposure to federally listed endangered and threatened species (endangered species) and designated critical habitats. We share concerns regarding legal vulnerabilities if EPA cannot find a path forward for ESA within the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) process – lawsuits, delays in registrations, and real threats to existing and new registrations. However, EPA must recognize the intense pressure the stakeholder community faces to hastily review, analyze, and comment on these proposals. The tremendous impact of these ESA framework proposals on U.S. corn growers cannot be understated.

NCGA hopes that EPA has valued the ongoing dialogue with U.S. corn growers to identify practical solutions, and we assert that EPA must continue to engage with this central segment of the agricultural sector for these proposed protections to be effective. Therefore, NCGA requests that EPA conduct consultations on the matters outlined below in the near term. Both the draft Insecticide Strategy and the final Herbicide Strategy exemplify the fundamental change in the review of active ingredients (AIs) and the process by which chemistries are made

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available to growers. As NCGA comments on this draft, we also consider updates from the Herbicide Strategy in how they intersect, particularly in the proposed mitigations for spray drift and runoff/erosion. Our written comments provide general feedback from U.S. corn growers as the basis for ongoing dialogue to identify practical solutions for implementing these frameworks so growers may effectively mitigate to protect identified species and their critical habitats.

NCGA and its members support the sustainable production of corn in the United States. There are three equally vital components to sustainable agricultural production – environmental, social, and economic. Without the strength of one component, the other objectives of sustainable production cannot be met. The ESA strategies outlined by EPA address environmental efforts to protect the federally listed endangered species and their critical habitats. For these efforts to be successful, growers need to be part of the evolution of how pesticides are labeled and stewarded. For growers to socially accept their role, the Agency must consider the burden of how complex and the associated costs of such requirements to growers. Today, many U.S. corn growers face an economic outlook that places many of them in dire financial situations. Therefore, the future preservation of U.S. agriculture must also be considered and preserved for its vital contribution to food security and meeting the needs for our food, feed, fiber, and fuel.

Insect pests are some of the most devastating threats facing agricultural crops. Many of these pests can also transmit secondary pests, including bacteria, viruses, or fungal infections, risking further crop damage. Restricting producers' ability to access and use an array of insecticidal tools effectively would inflict significant, irreparable harm to the crop produced, the financial integrity of family-owned operations, and our consumers. For all mitigative approaches to reduce the off-field transport of insecticides in spray drift, runoff, and erosion, NCGA once again implores EPA to explore ways to maximize the value of widely adopted practices farmers are most familiar with, such as no-tillage or conservation tillage and cover crops. While each of these examples is not applicable in all corn production, practices such as these can be a win-win for both the species and the soil health interests of farmers. It is easier to encourage broader adoption of a known practice, especially when there is a shared value.

### ***Goals of Insecticide Strategy***

The Draft Insecticide Strategy “focuses on developing and implementing early protections for more than 850 federally threatened and endangered species (listed) and designated critical habitats from the potential exposure from the use of conventional insecticides with agricultural uses in the lower 48 states. The Strategy considers foliar applications (including chemigation), soil treatment, treated seed, and granular formulations.

The stated goals of the IS are as follows:

1. *Identifying mitigations for listed species likely impacted at the population-level by the agricultural use of conventional insecticides;*



2. *Considering mitigations that would reduce major routes of insecticide exposure to listed species;*
3. *Improving the efficiency of future ESA consultations on conventional insecticides including, where appropriate, applying the final strategy to future registration and registration review actions; and*
4. *Increasing regulatory certainty for growers and other stakeholders regarding the use and availability of conventional insecticides.*

NCGA is encouraged by the grower feedback since incorporated by EPA into the final Herbicide strategy and the draft Insecticide Strategy. EPA is hopeful these frameworks end lawsuits against the agency's longstanding failure to meet ESA obligations for pesticides. EPA's solution to meet these ESA goals will be both revolutionary and evolutionary for pesticide use in the future. Growers need the Agency to clearly communicate what success looks like under this new regime. EPA must also assure stakeholders the goalpost will not be continually moved, and more burdensome requirements will not be asked of growers in the future.

EPA must further consider the intent of pesticide reduction and how to best implement this approach. The EPA has used the maximum application rates allowed by the label for their risk calculations. Restrictive measures or incentivization of reduced product use that leads to lowered efficacy may lead to increased resistance development amongst pest populations. EPA has a responsibility to ensure that growers' hands are not forced to swap good insect resistance management practices for point values or buffer restrictions. In many cases, pure reduction of insecticide application can have a negative effect on farmers and the environment. In some cases, a reduction in application rates may lead to more insect-resistant pests that present additional long-term challenges. The growers must have clear information on the label to understand the minimum effective application for insect resistance management purposes. Additionally, it is critical to have other highly acceptable mitigation measures for growers to choose from beyond the reduction in insecticide applied.

#### ***Mitigation Options for Runoff/Erosion***

All four application methods (foliar, soil treatment, treated seed, and granular formulations) will require an assessment of runoff/erosion exposure pathways. We understand that the EPA will determine how many runoff/erosion points are required to use the product within each agricultural site (field) for different application methods. Each field must meet the required number of points to use that product on the specified crop. This could become complicated quite quickly for a grower trying to manage a cropping system across their entire farming operation if different point values are assigned utilizing variables of application method and crop.

NCGA commits to continuing to work with EPA to identify and make available the most practical mitigations for U.S. corn farmers to implement. NCGA asks EPA to consider the following recommendations on the mitigations or reliefs currently available.



- **Mitigation Relief Based on Pesticide Runoff Vulnerability:** Sub-county relief should be considered.
- **Systems that Capture Runoff and Discharge:** Subsurface or Tile Drainage with a Controlled Outlet requires no additional mitigation. Constructed and natural wetlands are assessed as highly mitigating (3 points). EPA should give further thought to the role of water retention systems, which would also lower the flow of runoff and increase sediment contact while collecting nutrients and AIs and providing time for these substances to break down.
- **Mitigation Measure from Multiple Categories:** Model demonstrations of pesticide mitigation strategies at the field level indicate compounded mitigation when more than one mitigation measure is applied. EPA should further evaluate the additive value of any combination of runoff/erosion mitigations and consider weighted points reflecting this effect.
- **Qualified Conservation Program:** NCGA asserts that locally implemented conservation programs at the state or regional level are undervalued by EPA in their potential role to meet mitigation benchmarks, support technical assistance, and verify best practices. While we recognize that not all programs are created equal, NCGA requests the Agency further consider the role of these programs, as well as the recognition that some programs will achieve “runoff/erosion exposures that would not likely have a potential for population-level impacts” and no further mitigations would be needed.
- **Recognition of Specialist in Addition to Qualified Conservation Program.** EPA should consider the value of specialists, such as Certified Crop Advisors (CCAs), to support overall best management practices on-farm. These experts are credentialed to support growers beyond runoff and erosion and can develop integrated pest management plans to manage insect damage and resistance effectively.
- **Technical Expert:** NCGA asserts that using technical expertise should be assessed more than one point. EPA states that there is higher confidence in mitigations supported by a technical expert, and this higher confidence should be rewarded.

#### ***Mitigation Options to Reduce Spray Drift Buffer Requirements***

Foliar applications and soil treatments will be considered for spray drift pathways of exposure. EPA will determine spray drift buffer distances required to use the product within each “field” for different application methods. These buffer distances may be reduced through percentage reductions based on various spray drift mitigation measures. U.S. corn production primarily relies on aerial broadcast spray, ground broadcast spray, and, to a lesser extent, chemigation.

Because the EPA only considered spray drift measures generally included on the label and adjustments to these practices on population-level impacts, NCGA requests that the EPA work with growers and agricultural extension to review existing spray drift research for additional mechanisms to mitigate spray drift. In review of the proposed spray drift mitigations with a geographically diverse representation of NCGA membership, it was evident that the spray drift



aspect of the Strategy is complex and challenging to meet. NCGA commits to continuing to work with EPA to identify and make available the most practical mitigations for U.S. corn farmers to implement. NCGA asks EPA to consider the following recommendations on the mitigations currently available.

- **What Growers Can Easily Control:** EPA should consider the three variables growers can most easily adjust for spray drift control and focus on practical buffer reductions as a result. These three factors include droplet size, adjuvant, and volume.
- **Application Nozzle Technology:** Droplet size is an important factor in spray drift reduction used by growers. Nozzles designed to reduce drift are available to growers and release a more consistent droplet size than conventional nozzles. When these nozzle technologies are utilized, EPA should consider additional buffer reduction credit for coarse and very coarse applications.
- **Adjuvants:** NCGA encourages EPA to incorporate the same drift-reducing benefits into the final Insecticide Strategy that was adopted in the final Herbicide Strategy.
- **Boom height:** The DIS describes low boom as a release height of less than two feet above ground and high boom as a release height of more than two feet above ground. It would be rare for insecticide applications to crops made at two feet or less from the ground. In most cases, the release height would be below the canopy. EPA should change the height definitions to describe low boom as two feet or less above the application target and high boom above that measure. Spraying from two feet or less into the crop canopy provides significant drift reduction benefits, particularly when used with an adjuvant, as the application is made into layers of plant material and prevents rebound from a hard surface.
- **Pressure on a Pivot (Chemigation):** Overhead Chemigation equipment is most effective when the system is operating as designed. Most systems are set up to operate at the pump at 30-50 psi, and the pressure will inherently decrease outward, usually at 15-20 psi. EPA should consider how a grower can retain the buffer reduction credit and maintain proper system operation to preserve the operation of the equipment and the well.
- **Field Passes.** The DIS states that the number of passes positively correlates with the risk of drift and offers a buffer reduction for 1, 2-4, and 5-8 aerial passes, respectively. Effective application is based on the zone of application or the area the pest has infiltrated, wind speed, the spray pattern of the equipment, application height, as well as the width of the boom. Therefore, this buffer reduction benefit is not practical or recommended under best management practices of an Integrated Pest Management (IPM) plan. It negates the purpose of the application and increases the risk of resistance. While there are possible scenarios where this benefit might be achievable by a grower, EPA must consider how to better address passes, benefits, and IMP. For example, a grower may receive a buffer reduction benefit for using an IPM plan which would, dependent on the pest, recommend a smaller zone of application where feasible.



- **Downwind windbreaks:** In the DIS, the EPA defines a basic windbreak as consisting of at least one row of trees/shrubs or a four-foot-wide strip of nonwoody vegetation, and an advanced windbreak as at least two rows of trees/shrubs or an eight-foot-wide strip of nonwoody vegetation. The DIS includes a 50 percent and 75 percent buffer reduction for basic and advanced windbreaks, respectively. However, for a 100% reduction of buffer the windbreak must be a minimum of 60 feet. In this scenario, an eight-foot-wide windbreak receives the same credit (75 percent buffer reduction) as windbreaks ranging from 30 to 50 feet, 30, 40, or 50 feet wide. NCGA urges the agency to either provide a 100 percent buffer reduction at widths less than 60 feet or include a stepped approach to buffer reduction for windbreaks between eight and 60 feet.
- **Windspeed:** The DIS and most pesticide labels prohibit applications when windspeeds exceed 15 mph. Windspeeds of three to ten mph are generally seen as optimal. While ten mph or less windspeed may be infrequent in some areas of the country, particularly later in the day, applications at windspeeds between three and ten mph should be encouraged. These windspeeds result in reduced drift and should benefit from a reduction in buffer requirements.

### ***On-Field Species Interactions***

NCGA encourages EPA to work with growers in developing a practical approach to address on-field exposures. Growers apply insecticides to protect against or eradicate insects causing damage to crops, reducing yield, and creating conditions that jeopardize the quality and safety of that grain. EPA should consider the variance in life cycles of the species to be protected and the pest to be killed. While this could create highly complex situations for use, it could also offer more opportunities for agricultural application when needed. NCGA would also suggest consulting growers extensively before instituting bloom or time of day mitigations or restrictions. Additionally, NCGA is highly concerned with the uncertainty the Agency may instill with applying AI exclusions, particularly in Pesticide Use Limitation Areas (PULAs) or in the Vulnerable Species framework being developed.

### ***Seed Treatments***

For most corn growers using seed treatments has become a standard farming practice. Seed treatments use a one-time application to protect corn seeds from insects and diseases during the time when they are the most vulnerable. These treatments enhance stand establishment and increase the yield potential for corn growers. Insecticide treatments on corn seed provides protection from many pests, including wireworm, white grub, black cutworm, seed corn maggot, grape colaspis, and fall armyworm. Seed treatments are often more effective than spraying pesticides at the early corn growth stage because seed treatments are more targeted. Seed treatments are also a key component of corn growers' integrated pest management programs that increase the lifespan of crop protection products.

When used according to seed label instructions, treated seeds are safe for people and the environment, and because seed treatments stay with the seed, they are less likely to affect



non-target organisms. Since seed treatments use a very small and precisely measured application of a crop protection product directly on the surface of the seed, there is no chance for spray drift to occur, and the runoff/erosion effects will be limited. NCGA supports EPA's proposal not to require spray drift mitigation for seed treatments and to limit required mitigation for runoff/erosion.

### ***Implementation and Growers***

During the Webinar for Stakeholders on the DIS, EPA responded to a question on implementation for growers. EPA offered a response walking through how a grower would address a hypothetical label. If said label would have runoff mitigation required, a grower would "need to see if they were in an Insecticide Strategy PULA or somewhere in the lower 48 states to see what your mitigation is." Would this indicate that a grower would have to assess PULAs for each different type of pesticide? The response by EPA continued, in all honesty, in circles. So, while the Agency conveys a goal to make language and the process simple for growers, there is no indication currently that EPA is consulting growers on how to make the implementation of these strategies simple for growers, let alone practical. Because grain production benefits from economies of scale, high volume, and low margin products, successful participation by U.S. corn growers requires that mitigation measures be simple, efficient, and practical.

NCGA asserts that EPA must engage with the grower community immediately to work on implementation that would be successful at the grower level. For example, EPA states they are developing a calculator for runoff/erosion mitigations. Still, there are no details on how or when this will be available for growers to test before it is released to provide feedback on how to make it user-friendly. The Agency needs to adopt a phase-in or benchmarking approach to the adoption of structural mitigation measures, such as windbreaks, which could take years to reach the required qualifications. A safe harbor provision needs to be established that protects growers in compliance but experiences unintended mitigation challenges out of their control, such as an unexpected deluge of rain, cover crop failure, or harm to a species despite mitigations. Additionally, the agricultural community and EPA should develop a step-by-step process by which training and education will be provided to growers, their technical support, and regulating officials.

### ***Uncertainties***

U.S. corn growers undoubtedly do not need more uncertainties or variables out of their control. The DIS, as well as the final Herbicide Strategy, continue to leave growers with many questions that create tremendous concern. NCGA welcomes the opportunity to discuss with EPA how we can address these uncertainties and find workable solutions for the successful protection of endangered species and their critical habitats. Below are a few of the top-of-mind questions that remain:

- If, how, and when will FIFRA IEM be applied and/or intersect with ESA-specific mitigation requirements?



- What is the scope of the final PULAs and how do these PULAs intersect?
- Can being in a PULA require more than nine points or application exclusion zones? How will the Vulnerable Species Pilot be applied?
- How will the Agency address non-managed areas that may need treating? How will farmers be able to handle infestations in these areas if the non-managed area is part of the spray drift buffer requirement area? What about emergency treatments for invasive or unexpected pests?
- What is the timeline by which growers will first face the requirement for a multitude of mitigations related to ESA frameworks? While the EPA indicates a need for education, communication, and outreach, the plans to do so seem unclear beyond ongoing data dumps of information to web-based systems.

### ***Risk Assessment***

While EPA has suggested more flexibility in mitigation measures in both the final Herbicide Strategy and the DIS, they cannot supplant product-specific risk assessments to confirm the need for a particular measure or reveal that less stringent mitigations are appropriate. Risk assessment refinements can incorporate modification and modernization in exposure calculations and incorporate relevant effects data. Pesticide registrants and users have developed tools and models for better refinement of the overall processes, and these should be considered by EPA as part of the best science and data available.

Specifically, improvements should include continuing to update spray drift calculations for modern agricultural processes, realistic application assumptions, and geospatial refinement through the incorporation of Tier 3 scenarios, proximity, and percent crop area (PCA)/ percent crop treated (PCT) to the risk assessment to better account for exposure. Otherwise, proposed mitigations may be unnecessary to protect species and detrimental to agriculture in creating excessive economic impact for farmers. EPA should right-size mitigations early on in this process and remain open to adjusting the default mitigations as the Agency proceeds through the stages of the registration process.

NCGA encourages the Agency, the United States Fish and Wildlife Service, and the National Marine Fisheries Service to greatly refine their exposure and effects assessments to be more reflective of actual pesticide use and to allow a more reasonable and realistic determination of potential population-level effects. NCGA looks forward to opportunities to contribute refinement information to improve risk assessments, and public events such as EPA Technical Briefings, that would help build additional trust and goodwill with stakeholders in the ongoing development of the EPA ESA Workplan and final strategies.



NCGA asks EPA to carefully consider our comments on how the proposed Insecticide Strategy will impact U.S. corn growers. We welcome the opportunity for future dialogue and discussion on this critical issue.

Sincerely,

A handwritten signature in blue ink that reads "Harold Wolle, Jr." in a cursive script.

Harold Wolle, Jr.  
President, National Corn Growers Association