



March 28, 2014
Office of Pesticide Programs
Regulatory Public Docket
Docket: EPA-HQ-OPP-2013-0744
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Re: Memorandum of Understanding Between the U.S. Environmental Protection Agency Office of Pesticide Programs and the Department of the Interior U.S. Fish and Wildlife Service Regarding Implementation of Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds”

Dear Sir/Madam:

CropLife America (“CLA”) respectfully submits these comments in response to the above-referenced Memorandum of Understanding (“MOU”) implementing Executive Order 13186. Established in 1933, CLA represents the developers, manufacturers, formulators and distributors of plant science solutions for agriculture and pest management in the United States. CLA’s member companies produce, sell and distribute virtually all the crop protection and biotechnology products used by American farmers. CLA is dedicated to supporting responsible stewardship of our members’ products to promote the health and well-being of people and the environment, and to promote increasingly responsible, science-driven legislation and regulation of pesticides.

CLA applauds and shares the government’s commitment to environmental protection. To that end, CLA recognizes the government’s responsibility to protect migratory birds and the benefit some federal agencies can receive from FWS’s expertise regarding the health and welfare of migratory birds. It is CLA’s concern, however, that the MOU between FWS and EPA’s Office of Pesticide Programs (“OPP”) is unnecessary due to EPA’s administration of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”). 7 U.S.C. §§ 136-136y (2013). As discussed below, FIFRA’s stringent registration requirements ensure that the objectives of EO 13186, the protection and conservation of migratory birds, are accomplished.

FIFRA is a comprehensive regulatory statute that provides the basis for regulation, sale, distribution and use of pesticides in the United States. Pursuant to FIFRA, a pesticide cannot be manufactured, transported or sold without EPA first registering the pesticide for specific uses. FIFRA’s registration process is stringent. Before registering any new pesticide, EPA must ensure that the pesticide, when used in accordance with an EPA-approved label, will not cause unreasonable adverse effects to human health or the environment. To determine that the pesticide will not cause unreasonable adverse effects when used properly, OPP reviews and analyzes thousands of pages of data, comprising the results of years of scientific tests on the pesticide’s safety and efficacy. These safety tests include the pesticide’s effect on non-target species, including birds. For instance, if use of a new pesticide may pose a risk to



birds, the registration application must include the results of tests such as avian oral toxicity, dietary toxicity, and reproduction studies. *See* 40 C.F.R. § 158.630. Once a pesticide is registered, FIFRA provides EPA with the power to cancel any pesticide registration if subsequent information shows that continued use of the pesticide would pose unreasonable risks to the environment, including migratory birds. In addition, FIFRA requires that all registered pesticides undergo registration review every fifteen years. The effects of the pesticide on non-target species, including avian species, is again reviewed and analyzed during this procedure.

Because of the above stringent and comprehensive FIFRA regulatory scheme, the objectives of EO 13186 are met without the need for the information sharing the MOU contemplates, which is likely to divert scarce resources at both FWS and EPA, resources better spent on other actions with a more direct benefit to the environment.

To the extent that OPP determines that an MOU between FWS and OPP is necessary, CLA appreciates the MOU's recognition that pesticides provide societal benefits, such as controlling disease-causing organisms and fostering a safe and abundant food supply. CLA, however, is concerned that the MOU states that it is *both* EPA's and FWS's responsibility to "identify where legal use of registered pesticides in the United States is having, or is likely to have, a measureable negative effect on migratory bird populations and their habitats." This statement is unnecessary and contrary to FIFRA because, as explained above (and in the MOU itself), FIFRA requires EPA to determine, prior to registering a pesticide for sale and distribution, that the pesticide poses no unreasonable risk to the environment, a decision that FIFRA also requires EPA to review every fifteen years. Thus, CLA requests that OPP delete the above statement from the MOU or revise it to more accurately reflect the respective duties of each agency.

Second, the draft MOU requires FWS to provide EPA with information on the "economic, societal and environmental benefits of migratory birds" for OPP's "consideration in risk management decisions related to pesticide registrations." Again, this information is unnecessary as OPP already takes into account a pesticide's effect on avian species when determining whether a pesticide poses an unreasonable risk to the environment. FWS could better use its resources to provide such information to other agencies that may not be aware of the societal and environmental benefits of migratory birds. The MOU would also benefit from clarification of the reference to the use of "best available science" in the "weight-of-evidence" approach that should be used in EPA's conclusions in pesticide risk assessments conducted as part of the registration review process. The "weight-of-evidence" approach needs to be more clearly defined with respect to how the best available science should be considered in the assessment. Specifically, reference should be made to EPA guidance on using incident data in evaluating listed and non-listed species under registration review. Using EPA guidance provides a well-designed and tested framework for how information can be evaluated for quality and relevance for appropriate consideration in the assessment process.

Finally, CLA agrees with the draft MOU that EPA and FWS should work collaboratively to improve incident reporting, but recommends that EPA and FWS conserve their respective resources and only



conduct testing on bird carcasses when there is a reasonable expectation that the bird suffered from pesticide poisoning. In addition, the MOU should clarify that the goal of improved incident reporting is not the result of any conclusion regarding alleged under-reporting, but should recognize that other factors, such as the use of newer pesticides, may account for the decrease in incident reporting.

Again, CLA applauds and joins both FWS's and EPA's commitment to protecting and conserving migratory bird populations. As such, CLA appreciates the opportunity to submit these comments on the draft MOU. If you have any questions regarding these comments, please do not hesitate to contact me at mleggett@croplifeamerica.org or 202-872-3873.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Leggett", written over a light blue horizontal line.

Michael Leggett
Senior Director, Environmental Policy