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Regarding: *NOIL Glyphosate*

Ms. Barajas-Ochoa,

Please accept these comments from the Almond Hullers and Processors Association (APHA) in opposition to the Office of Environmental Health Hazard Assessment's (OEHHA) intention to list glyphosate under the Labor Code provision of the Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65). Almonds are California's second largest agricultural commodity with a 2014 farm gate value of \$5.9 billion and APHA membership represents over 90% of the total California Almond Industry based on tonnage. If OEHHA chooses to accept the International Agency for Research on Cancer's (IARC) classification as a singular basis for Proposition 65 listing without further scrutiny or review and does not evaluate the weight or quality of evidence, it will overlook errors in IARC's process that resulted in the misclassification of glyphosate.

In the U.S., the E.U. and most other countries, no herbicide can be used until it has been thoroughly reviewed and approved for its intended use. And no regulatory agency in the world considers glyphosate to be a carcinogen. In fact, the U.S. EPA has placed glyphosate in its most favorable category for carcinogenicity. The scientific data on glyphosate also consistently demonstrates no evidence for developmental and reproductive toxicity, genotoxicity, endocrine disruption potential, neurotoxicity and immunotoxicity. Glyphosate's history of safe use is supported by decades of data from more than 800 scientific studies – many conducted by independent researchers. Based on the overwhelming weight of evidence and the consensus of regulatory agencies around the world, IARC's listing is scientifically unwarranted and unsound.

The IARC classification overlooked decades of thorough and robust analysis by regulatory agencies, including a multi-year assessment just completed on behalf of the pesticide regulatory authority in the European Union which classified glyphosate as non-carcinogenic. Another registration review is currently underway by the U.S. EPA., and in 2014, the EPA reviewed more than 55 epidemiological studies conducted on the possible cancer and non-cancer effects of glyphosate and concluded: "this body of research does not provide evidence to show that glyphosate causes cancer, and it does not warrant any change in EPA's cancer classification for glyphosate."<sup>1</sup>

In addition, during the IARC review, relevant scientific data were excluded and/or dismissed as not contributing to reach the conclusion, such as the recently completed review conducted on behalf of the European Union, as well as many animal studies. No link between glyphosate and an increase in cancer is identified when the full data set is included in a rigorous review.

To put it simply, IARC's conclusion is not supported by scientific data and is inconsistent with numerous multi-year, comprehensive assessments conducted by hundreds of scientists from countries worldwide who are responsible for ensuring public safety.

Notably, glyphosate specifically inhibits an enzyme that is essential to plant growth; this enzyme is not found in humans or animals, contributing to the low risk to human and animal health when using glyphosate-based products according to label directions. It also is able to be applied with a low chance of harming non-target plants, as it has low volatility and binds tightly to most soils.

Agricultural systems in the US have evolved over the last 20 years to become more productive and environmentally sustainable. Glyphosate has allowed farmers to increase the incorporation of more sustainable practices into production, including no-till and conservation tillage systems. Reducing tillage has enormous benefits, such as less soil erosion, improved soil organic matter, less soil compaction, increased soil moisture, cleaner water, reduced energy use, more wildlife habitat, and less greenhouse emissions that contribute to climate change. The principle barrier to reducing or eliminating tillage was the challenge of controlling weeds with available soil-applied herbicides.

In the state of California, glyphosate-based herbicides have been a valuable tool for weed control for farmers and other users (e.g., landscaping and lawn care professionals, foresters, etc.) for more than 40 years. It provides excellent, cost-effective, broad-spectrum weed control and is labeled for use in more than 250 crops in California, including almonds. Further, it doesn't have the restrictions that many substitute herbicide products may have. Globally, the overall safety profile has contributed to the adoption of glyphosate-based herbicides in more than 160 countries.

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<sup>1</sup> Statement of Carissa Cyran, Chemical review manager for the Office of Pesticide Programs at EPA (2015). <http://www.croplife.com/editorial/epa-plans-response-to-iarc-glyphosate-finding-but-not-just-yet/>.

Listing a chemical under Proposition 65 places its users at great risk of litigation. Any person in the public interest can sue any business with more than 10 employees for exposing anyone in California to the listed chemical, in any detectable quantity. As a result, should OEHHA list glyphosate as a carcinogen under Proposition 65, users of glyphosate will understandably be concerned about the possibility that they will be sued by Proposition 65 enforcers (also known as bountyhunters), whose goal may not be enforcement of Proposition 65 but the publicity surrounding litigation or the potential recovery of attorney's fees and a portion of the civil penalties following litigation or a settlement resulting from the risk of litigation. This will hold true for users of glyphosate in California as well as for out-of-state farmers who use glyphosate on crops that are sold into California or find their way into products that are eventually sold to California consumers.

Once sued, the business then bears the heavy burden of proving that the exposure is below the "no significant risk level" (NSRL) for the listed chemical. Determining that precise level takes highly specialized expertise, which is very expensive. Proving the level in contested litigation can be even more expensive, and the outcome is uncertain. As a result, the listing of a chemical under Proposition 65 can have profound consequences, even if no exposures occur above the level requiring a warning (or where exposure poses no significant risk).

Should OEHHA decide to list glyphosate under Proposition 65, OEHHA can lessen the unnecessary effects of this listing by establishing a safe harbor NSRL for the chemical. This will provide useful guidance to users of glyphosate, both inside and outside of California, so that they can conform their business practices to the OEHHA established standard and thereby reduce the risk of litigation, with its windfall to attorneys resulting from the leverage Proposition 65 affords them. Indeed, OEHHA can and should minimize these unintended consequences of listing by issuing its proposed NSRL for comment simultaneously with the listing of glyphosate and moving expeditiously to consider comments and finalize the safe harbor NSRL well in advance of the listing's effective date (12 months for warnings and 20 months for discharges). This is particularly important for food and agriculture, where the lead time for a process change to be seen in the marketplace is particularly acute due to harvest seasons and food production calendars.

While we believe that glyphosate should not be listed as a carcinogen under Proposition 65, the multitude of users of this well-established and safe product are entitled to regulatory guidance, in the form of a safe harbor NSRL, so that they can prepare for and reduce the risk of litigation. As the unified voice of the California almond industry, we urge OEHHA, should it decide to list glyphosate, to propose a safe harbor NSRL at the same time as the listing.

Sincerely,



Kelly Covello  
President