Steve Troxler
Commissioner

North Carolina Department of Agriculture and Consumer Services
Structural Pest Control and Pesticides Division

James W. Burnette, Jr.
Director

April 15, 2019

Rick P. Keigwin
Director of Office of Pesticide Programs USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue
N. W. Washington, DC 20460

Dear Mr. Keigwin,

This letter is in response to the notification posted on the Guidance on FIFRA 24(c) Registrations on 03/19/19, under: Important Information on Requests Under FIFRA 24(c). According to the notification, EPA is now re-evaluating its approach to reviewing 24(c) requests and the circumstances under which it will exercise its authority to disapprove those requests.

EPA stamps and accepts federal labels from registrants with one-size-fits-all mitigation measures. These mitigation measures do not take into account unique or special local conditions, which may increase risks. Oftentimes, the inadequacy of federal labeling become all too clear after the fact. For example, the hundreds and hundreds of damage cases reported during the first year of introduction of the new auxin technologies for over-the-top applications to genetically modified soybeans and cotton. In order to enable this technology to be introduced safely and effectively into North Carolina and other states, it was necessary for states with unique or special local cropping and environmental conditions to exercise the option of granting Sec. 24(c) registrations.

Specifically, here in North Carolina we are fortunate to have some of the most highly qualified crop and weed scientists anywhere in the country. These scientists alerted us early on to the potential for overwhelming damage to sensitive crops should the auxin technologies be utilized under the federal labeling alone. While cotton and soybeans are important components in North Carolina's agricultural economy, tobacco is still a driving force with respect to row-crop production. The potential for damage to our tobacco industry would not have justified the continued registration of these auxin products, without further safeguards

We did not take these early warnings lightly, nor did we act unilaterally or in a vacuum. Rather, as is always our way, our Department worked in close cooperation with our University specialists, representatives from each of the manufacturers, and our partners within the Registration Division at EPA Headquarters to develop the required Special Local Needs labeling language and state-specific

training requirements. Based on this expert guidance, the additional restrictions -- reduced wind speed, record-keeping requirements, and state-specific training requirements -- all worked to enable these important technologies to be used to the benefit of North Carolina growers, while minimizing the potential for significant off-target damage incidents many of our other Southern states experienced.

Do not think for a moment we take lightly our responsibilities and authorities under our EPA Performance partnership agreement. Our Department has been an active partner with EPA since 1974—nearly half a century. Throughout this long and productive partnership, we have consistently worked to further the mission of the Agency and our Department's pesticide programs—to minimize and manage the risks of legal pesticide use. This continues to be our guiding principle to this day.

That said, when we believe that an action taken by EPA at the federal label, is not in the best interests of our State's producers, we are obliged to act appropriately. We believe NCDA&CS has responded appropriately by granting these Sec. 24(c) registrations. We are attempting to reduce risk and damage to non-target plants and the overall environment, while at the same time promoting co-existence. Without the N.C. labeling, it is likely that these products would not be registered by our N.C. Pesticide Board, and our growers would lose these otherwise useful pest management tools.

We would point out that the current editions of the time-limited labeling approved by EPA for these products now include the majority of the additional mitigation measures initially appearing on States' 24(c) labeling.

We understand that many SLA's have been asked, "Why don't these SLAs change the laws in their respective states, instead of utilizing the Sec. 24(c) process?" There are numerous reasons.

- It can take several years for a state to enact or adopt a law. In the meantime, unacceptable non-target damage could occur, and the technology option could be lost. We note also that the introduction of legislation—no matter how practical or necessary—does not assure its passage—or even its serious consideration by any state legislature.

- SLAs have determined that, by requiring certain mitigation measures, they can maintain and manage innovative technologies, which give growers valuable crop and pest management options that would otherwise not be available due to the increased risk of damage they might present.

- Using dicamba as an example, SLAs are continuing to learn about what may influence primary and secondary drift, and the training needs of applicators. With labels changing annually and a short two-year registration period of the dicamba containing products, SLAs have not been able to consistently identify the mitigation measures needed beyond the Section 3 label. **Utilizing the Sec. 24(c) process allows SLAs to be nimble, timely, practical and appropriately responsive**.

- The Sec. 24(c) process has been very successful, as it identifies needed mitigation measures each year. For example, since 2017, the dicamba federal product labels have gone through many edits as a result of states' Sec. 24(c) registrations. The additional requirements provided on Sec. 24(c) labels include: a wind speed restriction of less than 10 mph, the need for training, completing records within 72 hours, the introduction of cut-off dates, and many others that have been successful in reducing adverse effects and mitigating risks. If states had not used the

- Sec. 24(c) process, SLAs would still be in the initial stages of identifying individual mitigation measures. Again, many of these measures have been included in the Section 3 labeling.

Historically, NCDA&CS has granted a wide variety of Sec. 24(c) registrations. The EPA policy of not disapproving more restrictive Sec. 24(c) registrations has been in place for nearly 30 years. The current process has allowed SLAs to continue the use of various pesticides, within their individual jurisdictions, with additional safeguards.

NCDA&CS takes this issue very seriously, and again, we are committed to furthering our longstanding partnership with the Agency to ensure the legal, safe and effective use of pesticides. We take just as seriously a state's right to grant a Section 24(c) pesticide registration to reduce risk. We look forward to working with the USEPA, and the continued productive dialog we have so long enjoyed.

We look forward to your reply.

Sincerely,

Steven W. Troxler
Commissioner