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NFU submission to PMRA
Further Strengthening Protection of Health and the Environment: Targeted Review of the Pest Control Products Act

In December 2021, the Health Minister's Mandate Letter https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-health-mandate-letter directed the Minister Duclos to ensure Canadians are protected from risks associated with the use of pesticides and to better protect human health, wildlife and the environment, modernize and strengthen the Pest Control Products Act to ensure it supports transparency, use of independent scientific evidence and input to the decision-making process. The National Farmers Union (NFU) is pleased to provide our input to support the Minister in achieving this duty.

The NFU is a voluntary direct-membership, non-partisan, national farm organization made up of thousands of farm families from across Canada. Founded in 1969, the NFU advocates for policies that promote the dignity, prosperity and sustainable future of farmers, farm families and their communities.

NFU members are farmers who use must manage pest problems on their farms in order to make a living. Our members include a full range of farm sizes, types, crops, livestock and production methods. The foundation of NFU public policy positions is our members' knowledge, experience, values and aspirations. As an organization of farmers, we are acutely aware of the impacts of pesticide use on our own health and that of our families, neighbours and customers, and of their impacts on our immediate agro-ecosystems and the broader environment. We have a long view, with deep understanding that our actions today will affect future generations. We support scientific research that is guided by the public interest, and recognize that science is a process of learning about our world. Our support of the precautionary principle is born of this understanding, as many of our members have used products initially deemed safe and later banned when further research found them to cause unacceptable harm. Our unwavering support of science and regulatory authority in the public interest is based in the understanding that it is through democratic government that citizens can counter the self-interest of powerful corporations.

The *Pest Control Products Act* (PCPA) states that the Health Minister's primary objective when administering the Act is "to prevent unacceptable risks to individuals and the environment from the use of pest control products." The Minister must also "support sustainable development designed to enable the needs of the present to be met without compromising the ability of future generations to meet their own needs; seek to minimize health and environmental risks posed by pest control products and encourage the development and implementation of innovative, sustainable pest management strategies by facilitating access to pest control products that pose lower risks and by other appropriate measures; encourage public awareness in relation to pest control products by informing the public, facilitating

public access to relevant information and public participation in the decision-making process; and ensure that only those pest control products that are determined to be of acceptable value are approved for use in Canada."

The Act emphasizes that the Act's protection and consideration afforded to children shall also extend to future generations. And, the Act also requires the Minister to use the precautionary principle, which is defined as: "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent adverse health impact or environmental degradation."

It is in this context that the NFU provides our input to this consultation process. The following is our response to the *Questions for Input* from *Consultation on Further strengthening protection of health and the environment: Targeted review of the Pest Control Products Act, Discussion Document DIS2022-01*.

Objective 1 - Further Strengthening Human Health and the Environment through Modernized Business Processes Governing Pesticide Reviews

- **What barriers if any, exist in the Pest Control Products Act to implementing continuous oversight?**

The Act provides regulatory authority to define what kinds of information are required for registration decisions (Section 67). Under Section 12 the Act also authorizes the Minister to require registrants to provide additional information for monitoring purposes as a condition of registration. The Minister may initiate a re-evaluation process at any time if information requirements or procedures used for evaluation of health or environmental risks have changed since the last decision (Section 16). These powers under the Act appear to be sufficient to authorize continuous oversight, but there are opportunities for it to be strengthened.

The PCPA should provide stronger authority to ensure adequate data is collected to support continuous oversight by amending Section 12(1) to compel registrants to submit monitoring data as a condition of product registration. The specific information requirements could be defined by regulation so as to allow frequency and format of monitoring information to be updated as needed to ensure the Mandate is upheld. By requiring monitoring data as a condition of registration, the Pest Management Regulatory Agency of Health Canada (PMRA) will be able to spot emerging risks through ongoing analysis of data.

The PCPA requires the Minister to initiate re-evaluation at least once every 15 years. The PMRA has expressed concern that the amount of work required to complete all the 15-year evaluations is onerous. The capacity of the PMRA to do its work does not change the actual health and environmental risk of the pest control products. Re-evaluating pesticides a minimum of every 15 years is a safeguard to ensure the PMRA meets its primary mandate under the Act, to prevent unacceptable risks to individuals and the environment from the use of pest control products. The 15-year re-evaluation should be retained as a minimum standard.

RECOMMENDATIONS

- To ensure that continuous oversight is compulsory, the PCPA should be amended by changing Section 12(1) as follows:

  The Minister shall, ~~by delivering a notice in writing,~~ require all registrants
  (a) to compile information, conduct tests and monitor experience with the pest control product for the purpose of obtaining additional information with respect to its effects on human health and safety or the environment or with respect to its value; and
  (b) to report the additional information to the Minister within the prescribed time and ~~in the~~ form ~~specified in the notice~~.

- Maintain the current requirements regarding 15-year re-evaluation requirement in the PCPA to ensure that every registered pesticide is reviewed at least once every 15 years.

➢ **Are there any changes you would like to see in how MRLs are established?**

Maximum Residue Limits (MRLs) are set by nations to set standards for imported foods. Each nation makes its own decisions about which pesticides are covered by MRLs as well as the levels of their MRLs. Canadian farmers producing for our domestic market and companies importing food must meet Canada's MRLs, while Canadian farmers producing for export are subject to the importing country's MRL limits. Canada's MRLs thus define allowable residue in foods consumed by Canadians whether they are imported or domestically produced. Farmers must comply with the lower of Canada's or the intended exports market's MRL when making production decisions regarding pesticide use.

The PCPA empowers the Minister of Health to set maximum residue limits for approved pesticides, and provides the Minister with discretion to decide whether MRLs are required. It also allows the Minister to set MRLs for unregistered pesticides, or for uses not supported by registered pesticides' labels. The authority to set MRLs for unregistered pesticides and unregistered uses is needed to deal with imported foods produced in countries with different regulations and degrees of enforcement, and with domestic producers that are breaking our own pesticide use rules.

When deciding on MRLs, the Minister is only allowed to consider the health-related risks of the pesticide's residues, and any health risks that stem from the MRL must be considered acceptable. When determining an MRL, the Minister must consider risks from aggregate and cumulative exposure to its active ingredient and other pesticides with the same mechanism of toxicity, risks to sensitive populations and must build in a 10-fold safety factor to protect children who are subject to pre-natal and infant exposure – unless there is a scientific basis for a different threshold.

The PCPA provides legislative authority to establish MRLs, and requires MRLs to be related to health impacts, with particular concern for sensitive populations. The Act limits health impact considerations to the aggregate and cumulative exposure to the specific pesticide and those that have a similar mode of toxicity. The synergistic effects of exposure to the pesticide in question and others commonly found in the food supply is not supported by this legislation. We recognize it is difficult to quantify potential

synergistic exposure, however it is well-established that there are multiple routes and multiple pesticides Canadians are routinely exposed to, and that these have biological impacts particularly on children. A background level of this "pesticide residue cocktail" should be assessed, regularly updated, and integrated into MRL considerations and further supported by continuing to use a conservative approach to thresholds.

In the years since the PCPA was enacted, new scientific understanding of epigenetics has emerged. Recent research reveals that certain pesticides cause epigenetic changes in humans, animals and microorganisms, which are passed down to subsequent generations through inheritance. Epigenetic changes affect how an organism's DNA is expressed without changing the DNA itself. Epigenetic inheritance allows faster adaptation to environmental stresses than would occur as a result of evolution resulting from random DNA mutations. In the case of exposure to herbicides, such as glyphosate for example, epigenetic effects can cause significantly higher incidence of certain diseases in the third-generation decedents of exposed animal subjects. Scientists studying the matter say that "these transgenerational pathologies observed are relevant to human populations that have observed generational increases in these diseases, including ovarian disease, kidney disease, prostate disease, testis disease, altered pubertal onset, obesity, parturition abnormalities, and the presence of multiple diseases."

The PCPA mandate to use the precautionary principle and to include future generations in its consideration of pesticide impacts on children, as well as to encourage less toxic alternatives, all require effective measures to minimize exposure to pesticide residue in food. Epigenetic impacts and synergistic effects are health impacts which need to be taken into consideration when setting MRLs.

While the legislation deals with setting MRLs, it does not require the PMRA to monitor for compliance. The CFIA is responsible for monitoring MRL compliance in imported foods, but does not have a consistent monitoring program, and data is not published. The lack of consistent, relevant data and the absence of transparency make it impossible to know whether MRLs are being respected.

To meet transparency goals, the PCPA needs to be amended to give the PRMA authority to collect MRL compliance data, and to require timely publication of the data so that Canadians can be confident that food processors and importers are respecting Canada's requirements.

RECOMMENDATIONS:

- The PCPA be amended to require the PMRA to publish annual comprehensive reports on MRL compliance for domestic and imported food within 3 months of year-end to ensure Canadians have timely, transparent access to information about their food supply.
- Amend Section 11 (2) (a) to include consideration of synergistic effect of multiple pesticide exposures and the epigenetic impacts of pesticide exposure on human health.
- To further protect future generations, Section 11 (2) (b) should be amended to prohibit lowering the threshold below a 10-fold margin of safety.

Objective 2 – Improved Transparency

- **Would introducing plain language summaries of our pesticide decisions, as well as more plain language information on how we conduct our science, improve transparency?**

The PCPA Mandate includes to "encourage public awareness in relation to pest control products by informing the public, facilitating public access to relevant information and public participation in the decision-making process." Therefore, the Act already requires effective communication with the public in a way that empowers Canadians to be meaningfully involved in decision-making.

Introducing plain language summaries may be helpful to improve transparency, however this must not be a substitute for providing detailed technical information promptly and transparently during the review process and when announcing decisions. Plain language should not be used to minimize the complexity of the factors involved in the decision by over-simplification of concepts and elimination of nuance. If summaries are incomplete, biased, or over-generalized, they are reducing transparency, not expanding access.

RECOMMENDATIONS:

- Plain language summaries of pesticide decisions are provided in addition to the detailed, technical information used to describe and support the decisions.
- Plain language communication must always be accurate, reflecting the complexity, nuance and detail by using accessible language without over-simplifying the information provided.

- **What barriers exist in the Pest Control Products Act to increasing access to information, considering our obligations to protect CBI and our international commitments?**

The PCPA requires the public registry to include any advice from advisory councils established under the Act, unless disclosure of the advice may be refused because it discloses information that is subject to solicitor-client privilege or similar privilege between companies and their patent or trademark agents.

The *Access to Information Act* explicitly requires disclosure of information of results of product or environmental testing carried out by or on behalf of a government institution, along with a written explanation of the methods used in conducting the tests with the consent of the third party to whom the information relates. The information can be disclosed without the third party's consent if the public interest in regard to public health, public safety or protection of the environment clearly outweighs any financial loss or gain to a third party, any prejudice to the security of its structures, networks or systems, any prejudice to its competitive position or any interference with its contractual or other negotiations. The *Access to Information Act's* limitations on increasing public access to information stem from undue deference to third parties' consent and its requirement that the public interest in favour of disclosure needs to "clearly outweigh" potential economic harms to third parties' private interests. The Access to Information Act should be amended to ensure disclosure in the public interest the highest priority;

prevention of private financial harm should not take precedence over the health of Canadians and our environment.

The amount, kind and quality of information published on the PMRA public registry is affected by the nature of advice provided by the advisory councils appointed under the Act, which in turn is influenced by who is on these councils. The Act should ensure that advisory body members have no financial or professional ties to any company involved in the pesticide industry or any advocacy groups acting on their behalf. In order to rebuild public trust in regulatory bodies and government in general, it is essential for advisory councils to be entirely focused on protecting and advancing the public interest.

RECOMMENDATIONS:

- The Access to Information Act should be amended to prioritize disclosure of environmental and public health data over protecting the financial interests of third parties.
- PRMA should ensure the its advisory council appointees do not have financial or professional ties to the pesticide industry.

➢ **How can PMRA improve the approach to consultation with the public on regulatory decisions?**

The PMRA needs to ensure the public has a meaningful role in consultations in the lead-up to regulatory decisions. The interests of the public, including future generations, need to be the top priority.

The PMRA needs to recognize that pesticide companies have a financial interest in minimizing the perception of risks from their products and seeking minimal costs for regulatory compliance. The PMRA should ensure the economic interests of these companies are not allowed to influence its decision-making. Pesticide companies or their lobby groups such as CropLife, should not have privileged access to the regulator, the Minister or their political advisors.

The government must ensure that the PRMA has adequate in-house capacity to independently assess risks and efficacy of pesticides it regulates. It also must have access to scientific experts who do not have ties to pesticide companies.

Objective 3 - Increased Use of Real-world Data and Independent Advice in the Pesticide Regulatory Process

➢ **Are there any issues PMRA should consider in terms of accessing, sharing and releasing comprehensive water monitoring and pesticide use data?**

Since the PMRA's mandate includes ensuring the needs of the present can be met without compromising the ability of future generations to meet their own needs, and to minimize health and environmental risks posed by pest control products, PRMA should be vigilant regarding the influence of pesticide companies' interests in minimizing regulatory oversight and in maximizing sales of their products. The PRMA should not rely on monitoring data provided by companies, their advocacy

organizations, or scientists with financial or professional ties to the industry. The PMRA's budget should ensure it has capacity for, and access to scientific monitoring that is independent of industry.

In PRMA consultation meetings it has been suggested that the use of real-world data could be used to support less conservative margins of safety. Since the accuracy of real-world data may be difficult to verify, it should not be used to weaken environmental and health protections. Lab based studies that measure impacts of high exposure levels, for example, provide valuable information about the risks that may be hidden in large data sets collected in conditions that are difficult to control or fully characterize.

The health and environmental risks related to pesticide formulations require study in both the real world and the lab. Pesticides are never delivered as pure active ingredients. There is a large gap in the PMRA's information due to the narrow focus on active ingredients alone. Real world and lab data about the pest control products' adjuvants, surfactants, and carrying agents are needed to assess the risks of the products as they are used in the real world. These non-active ingredient chemicals enter our environment as a result of being used in pest control products, and should not be ignored.

Water monitoring and pesticide use data should be shared with the public annually, along with a description of the methodology use to collect the data. Data collection methods must be designed to reveal ecosystem impacts of low concentrations of pesticides, their formulants and metabolites in order to ensure the PMRA has information needed to protect biodiversity and ecosystem functions as well as human health. Raw data should be made available to permit outside scrutiny. PMRA needs to avoid using overly aggregated data when reporting to the public, as too-broad categories make it impossible to see patterns, trends, hotspots, etc., that are needed for understanding the significance of the monitoring data and its relationship to policy and regulatory decisions.

RECOMMENDATIONS:

- Monitoring and use data should include impacts of non-active ingredient components of pesticides.
- Real-world data should not be used to justify lower thresholds.
- PMRA should rely on monitoring and pesticide use data that is provided by scientists without financial or professional ties to pesticide companies or their advocacy organizations.
- Monitoring data should be published annually.
- The PMRA's budget should be increased to ensure that it can maintain an adequate number of scientists on staff to produce monitoring data independent of industry.
- PMRA must ensure monitoring methodology is sufficiently sensitive and fine-grained to ensure it can support the PRMA's mandate to protect environmental and human health, including future generations.

- **Do you have views on Health Canada's proposal to broaden authorization powers, establish a recall power for authorized or registered products, and establish appropriate post-market oversight?**

These proposals were in Part 6 of Bill S-6 at First Reading, but removed before the Bill was passed by the Senate in order to allow them to be considered in this consultation. See Part 6 of Bill S-6 (First Reading) March 31, 2022 https://www.parl.ca/DocumentViewer/en/44-1/bill/S-6/first-reading for the text of the proposed amendments to the PCPA.

Our understanding is that "authorization" would occur through much the same process as pesticide registration, but the PMRA would take the role of the registrant. To strengthen the proposed approach to authorization, the process should include the same public consultation and special review mechanisms that are already established for registered products.

We support the proposed post-market oversight and recall measures. These address a gap in the PMRA's authority to carry out its mandate.

RECOMMENDATIONS:

- Amendments proposed in Part 6 of Bill S-6 should be made to the *Pest Control Products Act*.
- The process for product authorization should include the public consultation and special review mechanisms that are established for registered products.

All of this is respectfully submitted by

The National Farmers Union
June 30, 2022