

First 100 days: It's Biden's EPA now. What does that mean for the agrochemical industry?

By [Virginia Gewin](#), January 27, 2021

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Hours after his inauguration, President Biden issued an executive order to review [48 actions by the Trump-era Environmental Protection Agency](#), including several controversial decisions on agricultural chemicals. Environmental and food safety groups saw the action as a welcome sign that the Biden EPA will begin to temper what they see as the agency's industry-friendly stance and prioritize the environment, public health, and science.

Most notably, the review list included the pesticide chlorpyrifos, whose 2017 ban was reversed by the Trump administration; a rule that weakened pesticide application safety standards; and another rule narrowing which scientific studies could be used in pesticide evaluations.

There is much more to do — or rather undo. Of the roughly 100 environmental rollbacks during Trump's tenure, the reinstatement of previously banned toxic pesticides, including the neonicotinoid [sulfoxaflor](#) and the herbicide [isoxaflutole](#), are among the most controversial and the ones industry critics are most eager to see reversed. Another is the Trump EPA's [decision to re-register](#) three dicamba pesticide products only five months after a federal court banned the weedkiller's use last summer. Advocates [have sued](#) to overturn that Trump decision.

"There's not much the agency can do super-fast," says former acting deputy EPA administrator Stan Meiburg, now director of graduate programs in sustainability at Wake Forest University. "All of environmental policy is a trade-off with stringency and time," he says.

Decisions made toward the end of the Trump administration will be the easiest to reverse, and it's likely that Trump's executive orders can be overturned by the new administration using the same process the White House used to reverse the chlorpyrifos ban.

For regulations that went through rulemaking, the swiftest reversal would be through use of the Congressional Review Act. The fast-track procedure gives the Biden administration 60 legislative days to overturn rules issued by federal agencies since Aug. 21, 2020. But this effort would require mustering considerable political will amid a pandemic and an impeachment trial. With more than 1,400 regulatory actions eligible to be overturned — more than 150 of them EPA rules — the Biden administration will likely be able to prioritize only 10 to 20 of them, according to an assessment by Pillsbury Law.

Many expect the Congressional Review Act will be the most likely means of overturning a rule designed to thwart the use of human health data, particularly epidemiological studies, in pesticide risk assessments. The rule was fast-tracked and approved in the waning days of the Trump administration, but a [federal court ruled Wednesday](#) that it broke the law in doing so. "It's the worst thing to ever happen to the agency," says Penny Fenner-Crisp, former senior science adviser to the director of the Office of Pesticide Programs (OPP), a division of the EPA, and now a consultant with the Environmental Protection Network, an advocacy group of former EPA officials.

The Trump administration dismissed [epidemiological studies](#) showing that low-dose exposure to chlorpyrifos stunts children's brain development. The move allowed the EPA to reverse the ban on the pesticide scheduled for 2017.

How chlorpyrifos will ultimately be banned is uncertain. Some former EPA directors predict it will mostly likely be revoked via a voluntary cancellation that requires industry's agreement. Corteva Agriscience, the largest maker of chlorpyrifos, has already agreed to phase the chemical out.

In contrast, a formal procedure to ban the pesticide could take two to three years, and in the past 40 years, there have been no formal cancellations of any pesticide, says Bill Jordan, a former deputy director at the OPP and now an industry consultant and a volunteer at the Environmental Protection Network. "EPA has always thought voluntary cancellation was a faster, cheaper, better process than a formal cancellation," he says.

For environmental groups, voluntary cancellation is less than ideal. “It’s very important that the Biden administration cancel chlorpyrifos of its own accord and without a voluntary cancellation,” says Emily Knobbe, an EPA policy specialist at the Center for Biological Diversity. Under a voluntary cancellation, “a [company] could re-register that pesticide,” she says. In fact, just this scenario played out with a pesticide called aldicarb, which was voluntarily canceled in 2010 and phased out. Then, on Jan. 12, 2021, the Trump administration [registered aldicarb](#) for use on up to 100,000 acres of Florida citrus crops. Still, that means this rule is eligible for overturning via the Congressional Review Act.

A formal cancellation of chlorpyrifos could also make it easier to use epidemiological data to evaluate other organophosphate pesticides once the Biden administration overturns the so-called “transparency in science” rule. “The studies that are raising questions about the safety of chlorpyrifos are the ones which include not just chlorpyrifos but other organophosphate pesticides,” says Jordan. “All the organophosphates are still among the chemicals for which EPA needs to complete registration review, a process due to be wrapped up by 2022,” he adds. (The EPA is required to review each registered pesticide at least every 15 years.)

“I think epidemiological data will play a much bigger role in the evaluation of safety of currently marketed pesticides,” says Jordan. But, he adds, “that’s a place where EPA needs more support.” Changes in the review process have the potential to reset the tone of the EPA’s relationship with industry, often described as too cozy.

In 1970, the EPA was famously described as the “gorilla in the closet” — the formidable federal oversight agency that could step in if state regulators proved too weak. But numerous critics, including five Senate Democrats, have suggested that the EPA has since become beholden to the industries it was meant to regulate.

“When it comes to pesticides, EPA’s Office of Pesticide Programs is pretty captured by industry,” says George Kimbrell, legal director at the Center for Food Safety, a watchdog group that [filed the lawsuit](#) leading to the revoking of EPA approval of three dicamba products. “The agency is fundamentally broken, and not willing to put the interests of the public and environment above those of pesticide companies,” he says, adding that’s been a problem for decades.

One of the most substantive, longer-term reforms, and a top recommendation of both the Environmental Protection Network and the Center for Biological Diversity, is for the EPA to finally comply with its responsibilities under the Endangered Species Act. “In 2013, the National Academies of Science issued a report stating that the methods to assess the harm to endangered species were not scientifically defensible,” says Kimbrell.

“Compliance with the Endangered Species Act requirements has been a problem for decades,” says Jordan. Knobbe points out that “during the entire history of the EPA, they have never once done an Endangered Species Act consultation.” Ideally, Knobbe says, the EPA will conduct Endangered Species Act consultations as part of the pesticide re-registration process, which must be completed by Sept. 30, 2022. Such a decision wouldn’t require any new rules, only a program-level decision to do the consultations, using rigorous science.

Ultimately, advocacy groups like the Pesticide Action Network will continue pushing the EPA to update its entire approach to risk assessment. PAN executive director Kristin Schafer points to legislation that Sen. Tom Udall, a New Mexico Democrat, introduced last August [to prioritize children’s health and farmworker safety](#) in pesticide safety reviews.

In addition, the Center for Food Safety has filed legal petitions requesting that the EPA conduct adequate assessments of neonicotinoid insecticide seed coatings, which are used on dozens of crops and can harm pollinators. It has also asked EPA to provide safety data on every chemical in a pesticide, instead of requiring toxicity data on only the active ingredient. If the EPA doesn’t take these steps, the Center for Food Safety plans to sue the agency.

One thing all the EPA watchdog groups agree on is that the agency was severely depleted of both funding and expertise during the last administration — and that will take precious time to restore. “I don’t think the damage can be repaired in four years,” says Fenner-Crisp.