



**STATEMENT BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
ENERGY AND COMMERCE COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
HEARING ON
“U.S. AGRICULTURAL SECTOR RELIEF ACT”**

submitted by

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on behalf of the

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July 18, 2012

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Members of the Committee, we thank you for this opportunity to present testimony on behalf of the U.S. floriculture industry. Continued availability of methyl bromide to U.S. flower growers is of great importance to our industry. We are complying with the Montreal Protocol. However, our industry is in danger because we are not being treated fairly under the terms of the Treaty.

The Society of American Florists (SAF) is the national trade association representing the entire floriculture industry, a \$32 billion component of the U.S. economy. Membership includes about 10,000 small businesses, including growers, wholesalers, retailers, importers and related organizations, located in communities nationwide and abroad. The industry produces and sells cut flowers and foliage, foliage plants, potted flowering plants, and bedding plants. Our products compete in an international marketplace.

In crop value, nursery and greenhouse crops have surpassed wheat, cotton, and tobacco and are now the third-largest crop in the U.S. – behind only corn and soybeans. Nursery and greenhouse crop production now ranks among the top five agricultural commodities in 28 states, and among the top 10 in all 50 states. Growers produce thousands of varieties of cultivated nursery, bedding, foliage and potted flowering plants in a wide array of different forms and sizes on 1,305,052 acres of open ground and 1,799 million square feet under the protective cover of permanent or temporary greenhouses, across the United States.

U.S. growers, whose ability to compete in that international marketplace is often at stake, are very concerned that their rights under the Montreal Protocol be supported by the U.S. government. Methyl bromide is a critical management tool in many kinds of production, particularly in Florida and California. The combination of methyl bromide and chloropicrin has long been used to control weeds, nematodes and plant pathogens like Pythium. While some industries have found acceptable alternatives, floriculture has struggled to find an acceptable alternative despite substantial investments in research. The production of field-grown cut flowers, some in-ground shade house flowers and caladiums rely on availability of methyl bromide for economically viable crops.

We greatly appreciate today's hearing, and we also greatly appreciate your introducing this important legislation, the U.S. Agricultural Sector Relief Act. We strongly support this bill and hope that Congress will move to enact it.

My testimony today will focus on four major points:

- 1. The U.S. needs to be more forceful in defending the rights and needs of U.S. growers. EPA should not deny or reduce a Critical Use Exemption (CUE) application unless it has substantial evidence that there are technological and economically feasible alternatives. The State Department should more actively push the U.S. nomination, rather than play defense.**
- 2. We need to have assurance that the CUE process will continue after 2015, which is the clear intent of the treaty.**
- 3. EPA should work with us to establish regulations implementing the “emergency event exemption” allowed by the Protocol. We need an emergency cleanup process that will allow us to go into our fields every few years and clean up the pests and diseases that have developed during the times when we were using the less-effective alternatives. There are other situations, as well, where an emergency event exemption is appropriate.**

4. The Quarantine and Preshipment (QPS) Exemption is also clearly provided for under the Protocol and must continue in order to protect international trade.

I. THE U.S. NEEDS TO BE MORE FORCEFUL IN DEFENDING THE RIGHTS AND NEEDS OF U.S. GROWERS'. EPA SHOULD NOT DENY OR REDUCE A CUE APPLICATION UNLESS IT HAS SUBSTANTIAL EVIDENCE THAT THERE ARE TECHNOLOGICAL AND ECONOMICALLY FEASIBLE ALTERNATIVES. THE STATE DEPARTMENT SHOULD MORE ACTIVELY PUSH THE U.S. NOMINATION, RATHER THAN PLAY DEFENSE.

Under the terms of the Montreal Protocol, U.S. growers are entitled to a CUE if practicable and economical alternatives are not available. Efforts have been made by the floral industry to find alternatives, and a significant market disruption would result from lack of availability of methyl bromide. U.S. growers have complied with the terms of the treaty, but we are not receiving the exemptions to which we are entitled.

Today we are faced with a political process that appears to be attempting to force U.S. growers to discontinue completely the use of methyl bromide despite the absence of suitable feasible alternatives. Without access to this necessary input, U.S. growers will be rendered non-competitive in the global marketplace. This will force many to cease operations, killing jobs and causing significant harm to the local communities in which we operate at a time of great economic uncertainty.

The basic CUE process works as follows:

1. U.S. growers prepare a very detailed application for EPA, describing their efforts to find alternatives, the reasons why alternatives do not work, and the economic reasons why methyl bromide must continue to be used.
2. EPA reviews this application ostensibly to ensure that the U.S. applications are complete and accurate. **However, EPA as a matter of course has reduced the amounts we request, and we question those reductions.**
3. EPA submits the U.S. application to the Secretariat of the Montreal Protocol.
4. The U.S. application and all other applications are reviewed by MBTOC and TEAP (the "scientific committees" of the Montreal Protocol governing body). **Significant reductions are typically recommended by those advisory groups again, we believe, without scientific justification.**
5. While technically at the full Protocol meeting, the parties to the treaty consider and vote on the CUE nominations, they essentially simply adopt the recommendations of MBTOC/TEAP.

The U.S. cut flower and foliage industry has participated in the CUE process since it was established because it is the only meaningful way we can possibly access methyl bromide to meet our needs. While the Montreal Protocol deals with the phase-out of the production of methyl bromide, the Protocol also clearly provides for a CUE. In short, an application can be made for continued use of methyl bromide if efforts have been made to find alternatives. If technologically and economically feasible alternatives are not available, then CUE applicants should be able to access methyl bromide.

Yet this provision is not being followed in the implementation of the Protocol. Despite having submitted CUE applications substantiating their need for the product in accordance with the provisions of the Protocol, U.S. growers are being forced to take arbitrary cuts in their requested

levels, with absolutely no scientific reasoning and no justification. That is not the Protocol that the U.S. signed and the U.S. government must not accept it.

A. EPA's Arbitrary Reductions

The California and Florida cut flower industry has applied for and been granted a CUE for a limited amount of methyl bromide in every year until this one. The applications are submitted three years in advance due to the lengthy review and approval process. For the past several years, the industry has requested about 70.5 metric tons of methyl bromide for California and over 50 metric tons for Florida.

In 2009 (for 2012 use), the international treaty had approved just 47 metric tons for cut flowers (California and Florida). In 2010 (for 2013 use), EPA's Critical Use Nomination to the international body requested 47 metric tons of methyl bromide for cut flowers. In a move resulting in virtually zeroing out Florida due to the registration of the alternative methyl iodide, MBTOC recommended, and the parties to the Protocol approved, just 40 metric tons for cut flowers for 2013 use. This was a significant reduction from what the industry needs and had requested in its CUE application. Those reductions were made even though there were no changes in the scientific information or circumstances known to EPA or MBTOC.

Cut flower producers again submitted to EPA the application for the 2014 CUE in September 2011. However, the 2014 application submitted by EPA to the international Montreal Protocol body in February 2012 did not include ANY allocation for cut flowers. In fact, of the ten categories of soil fumigation that were approved in 2013, the U.S. nomination for 2014 included only one – that for field-grown strawberries. It did not include applications for the other nine: cucurbits, eggplant, nursery stock, fruit/nuts, cut flowers, orchard replants, peppers, strawberry runners, or tomatoes. The only material change in circumstances from the prior year was the registration of methyl iodide in California.

EPA relied heavily on the registration of methyl iodide in California to conclude that methyl bromide would no longer be necessary. However, in our original application to EPA we clearly noted that methyl iodide at the label rate approved in California made it unlikely that the compound would be available or useful to California growers. Furthermore, we noted that the required buffer zones and the intense public opposition to the use of methyl iodide made it even more unlikely that the compound would be usable. Yet EPA continued to assume that methyl iodide would be a "drop-in" replacement for methyl bromide, ignoring the information provided in our application.

Then, shortly after the U.S. nomination was submitted to the Montreal Protocol, the manufacturer of methyl iodide, Arysta, withdrew sales of that compound in the U.S. Thus, EPA's assumption that methyl iodide would be a "drop-in" replacement for methyl bromide is now completely invalidated. We are encouraging EPA and the State Department to submit a supplemental request for 2014 this coming year or early next year – but it is expected that the criteria MBTOC/TEAP will use for reviewing the supplemental application will be even more stringent. We are making efforts to bolster the CUE application to EPA, but we are very concerned that our need will not be met.

B. Mellano & Company

EPA needs to better understand the complexity of our cropping systems and why something that works in one part of the world won't necessarily work for us. Simply dismissing our application by saying, in essence "It works in X country or state, so it should work for you" is not acceptable. Particularly in the case of ornamentals, the cropping systems and timing are so complex that it is

imperative for EPA to understand and acknowledge why methyl bromide is so important to our operations.

We at Mellano & Company farm over 400 acres (employing over 200 employees) and grow over 50 different crops of flowers and greens, with upwards of 20 different varieties within each of those crops. Unlike other agricultural farms, you have to envision our farm as a patchwork crazy quilt, with each square constantly changing in terms of crops, cultivating times, disease, pests and irrigation needs – and market demands.

We cannot fit our growing practices into one neat formula because we are ever changing and cannot afford to let our ground sit unused and idle. We must respond quickly to market demands, as well as issues with pests and diseases, and have access to the tools necessary to prepare our land for these changes in time to produce a saleable crop.

We will continue to work with EPA to ensure they have a clear understanding of our issues. But in the meantime, EPA is reducing our application amounts and we cannot afford these unscientifically based cuts.

In addition to the factors referred to above which make the use of methyl iodide impossible, the other alternatives are not adequate to protect us against soil pests and diseases, despite EPA's assumption that they "should" work. Just because research shows that an alternative will work in one country of the world, or in one part of the U.S. for one crop, does not mean that that same alternative will work for other crops in different economic, climatic, or soil conditions.

Our crops can have a planting value of \$60,000/acre. Some proprietary plants can cost as much as \$40,000/acre. We simply cannot afford to put such high-value plants into dirty soil with the risk of compromising the crop. We currently have over 50 different species in production between annual and perennial cut flowers on our farm alone. In the state, there are many more than that. Each one has a different yield, cost and profitability profile, as well as a cropping system that could be unique to that species

Consider these other points that apply to our farm:

- ◆ The cost of failure is very high when applications don't work.
- ◆ Hand-weeding is not an option in the U.S., due to the cost and to Cal-OSHA worker issues.
- ◆ For bulb-producing plants, the second season can result in rogue plants, causing production and harvesting issues.
- ◆ Drip-applied materials on sandy, hillside farms just don't work well. On high-sand soils such as those at our farm, lateral movement is minimal and therefore effectiveness of drip-applied materials is restricted to a narrow strip, rather than to the whole flower bed.
- ◆ Yield alone does not tell the whole story: plant vigor, plant height, stem thickness are also important. Yield must be accompanied by good quality.
- ◆ Methyl bromide is now very costly – up to \$3300/acre. We obviously are seeking viable alternatives, yet have not yet found them.
- ◆ We have perennial crops as well as annual ones. Those perennials, depending on the crop, must be productive for between 5 and 25 years. Soil diseases can and will reduce that lifespan significantly. We need a "clean start." One fumigation every few years will help to "clean up" the soil to prevent carryover and recurrence of disease.
- ◆ For perennials, the most important need is for disease and nematode control. For annuals, we need disease, weed and nematode control. For some diseases, if the pathogen overwhelms a perennial crop the crop must be replanted, those replant acres require a very serious clean-up treatment before the new plants go into the ground.

- ◆ True long-term rotations are virtually impossible to achieve, and fallowing expensive land is not cost-effective.

Those points are typical of the ones we have made, year after year. We do our best, in our annual applications to EPA, to explain why the variety and complexity of our cropping systems make it difficult to find alternatives to methyl bromide. Yet year after year, EPA reduces the amount we say we need, when they submit the U.S. application to the international body. And this year, with no warning and despite the fact that we thought we had provided them with all of the information they needed, they eliminated our application altogether.

EPA should not deny or reduce a CUE application unless it has substantial evidence that there are technological and economically viable alternatives. We ask that Congress put this requirement into law.

C. MBTOC/TEAP Arbitrary Reduction

MBTOC/TEAP (the “scientific advisory committees” of the Montreal Protocol) are tasked with reviewing CUE applications to make sure they are based on sound science. After this review, MBTOC/TEAP makes a recommendation to the parties as to what each country’s allocation should be. That recommendation is supposed to be based on their scientific reasoning.

Our applications, already reduced by EPA, are presented to MBTOC/TEAP. We are frustrated when the MBTOC/TEAP recommendations are reduced further with no scientific justification.

The following quotation from one MBTOC/TEAP report on the CUE nominations is particularly revealing of the unscientific and biased nature of the MBTOC decisions:

“MBTOC assumed that an alternative demonstrated in one region of the world would be technically applicable in another unless there were obvious constraints to the contrary e.g., a very different climate or pest complex.” [Report of the TEAP, October 2004, page 5]

This assumption is completely invalid and unjustified. This kind of “assumption” is not based on science. The U.S. has provided detailed scientific information on why certain alternatives available to other countries will not work in the U.S. Not only do climate and pest complexes differ, but the economies differ as well. An alternative, which might be economical in a developing country, may not be usable in the U.S., where cost/profit margins are considerably slimmer and labor, environmental compliance, and chemical costs are very high.

It is absolutely essential that MBTOC and TEAP be required to provide scientific justification for their decisions and detailed rationales of their recommended cuts to the nominating party. Without understanding why MBTOC and TEAP are recommending cuts, it is impossible to answer or defend a nomination, and we are forced to accept what can only be classified as an arbitrary reduction. Our State Department cannot argue effectively on our behalf so long as this charade of scientific review is allowed to continue.

D. The Negotiations at the Meeting of the Parties are Political, Not Science-Based

According to the agenda, the discussion period of the international meetings is directed around the CUE process of the Montreal Protocol. However, the underlying agenda for most parties has nothing to do with the Protocol treaty terms.

It is the clear intent of some countries, particularly the European Union representatives, to force a year-by-year decline in CUEs approved by the Parties. Such discussions and goals are contrary to

the Treaty. The Treaty provides for the CUEs in cases where practicable and economical alternatives do not exist. The Treaty does *not* require that CUEs should decline year by year.

Discussion at the international meetings imply that the U.S. applies for too much methyl bromide under its CUE application, and the amount should be reduced and phased out over time. Under the Montreal Protocol, if no economical and feasible alternatives exist the industry can utilize the CUE process.

The United States' agricultural community has complied with the CUE requirements, despite the fact that they are cumbersome, time-consuming and costly. Yet our applications continue, year after year, to be arbitrarily reduced, without any or with very inadequate scientific explanation.

We believe that it is also noteworthy to point out the efforts that our industry has to go to in order to try and participate in the Protocol process to advance their nomination. For example, in just considering the venues for the Meetings of the Parties under the Protocol, since 2003 those meetings have been held in such locations as Nairobi, Kenya, Prague Czechoslovakia, Dakar Senegal, New Delhi, India, Doha, Qatar, Port Ghalib, Egypt, Bangkok Thailand, and Bali Indonesia. These are not the easiest or necessarily safest locations to travel to. In short, we have to travel to distant lands to participate (however limited that participation is allowed to be) with governments of the world that hold our future in their hands.

The foregoing does not even take into account the other meetings that are held by MBTOC/TEAP that first will consider the US CUE nominations. The procedures of those committees are such that direct participation in their meetings for NGOs is essentially precluded. However, we are forced to live with their decisions. When we have raised these issues with the EPA and State Department, their response is essentially this is all controlled by the Protocol and there is nothing they can do other than encourage us to submit "robust" CUE applications which ostensibly will make it more difficult for the advisory committees to reject or reduce the US nominated amount. You can imagine how unsettling this all is to us.

The State Department should more actively advance the U.S. nomination rather than playing defense.

II. WE NEED TO HAVE ASSURANCE THAT THE CUE PROCESS WILL CONTINUE AFTER 2015, WHICH IS THE CLEAR INTENT OF THE TREATY.

We have now reached the point where EPA appears to be considering a complete phase-out of methyl bromide after 2015. That kind of complete phase-out is completely contrary to the Montreal Protocol, which clearly allows use of methyl bromide after 2015 if no feasible alternatives are available.

Nowhere in the Montreal Protocol is there any requirement that countries cannot avail themselves of the CUE process. Yet the political agenda of some of our trading partners and others involved in the international meetings is to push for just that – a requirement that CUE's would stop being issued after a certain date. .

In addition, and equally important, as circumstances change (failure of alternatives, changes in regulatory status, or changing a use from QPS to CUE), increasing a methyl bromide request is justified under the treaty. We ask that EPA be directed specifically to recognize that increases may be necessary and appropriate.

We ask for legislative direction to EPA and the State Department to continue the CUE process, in compliance with the terms of the Montreal Protocol.

III. EPA SHOULD WORK WITH AFFECTED INDUSTRIES TO ESTABLISH REGULATIONS IMPLEMENTING THE “EMERGENCY EVENT EXEMPTION” ALLOWED BY THE PROTOCOL.

EPA should work with impacted industries to develop an “emergency clean-up” process that will allow us to go into our fields every few years and clean up the pests and diseases that have developed during the times when we were using the less-effective alternatives.

After years of trying to use methyl bromide alternatives that are less effective, and having a CUE amount of methyl bromide below the level we really need, we are seeing pest and disease build-ups in our soils. This results in reduced yields and reduced quality. EPA needs to (as is allowed under the treaty) work with us to develop a way for us to have methyl bromide available as an emergency clean-up tool, every few years, to counter this kind of buildup.

After a few years of using alternatives to methyl bromide for soil fumigation, many of the U.S. growers notice a gradual (or sometimes an intense) build-up of weeds and diseases. A periodic “clean-up” with methyl bromide would allow us to use the alternatives during the intervening years without production losses – yet would also allow us to keep growing our crops once the level of pests and diseases in the soil has gotten to the point where the fumigation alternatives simply can’t get the soil clean enough.

As noted above, Mellano & Company produces perennial crops as well as annual ones. Those perennials, depending on the crop, must be productive for between 5 and 25 years. Soil diseases can and will cut that lifespan significantly. One fumigation every few years will help to “clean up” the soil to prevent carryover and recurrence of disease.

There are other situations in which an “emergency event” would require an exemption. For example, if there is no existing CUE but if a situation arises where a person who owns a farm, nursery, or food processing or storage facility suddenly requires fumigation and has no other alternatives, or if alternatives have suddenly become unavailable (as is the case with methyl iodide or sulfuryl fluoride), then an exemption for such an emergency event should be permitted.

The Montreal Protocol specifically allows such an exemption, under Decision IX/7, and EPA must move to establish reasonable regulations implementing procedures for granting emergency exemptions. **Furthermore, the 20 tons of methyl bromide which is the maximum authorized under Decision IX/7 should be the maximum on a per-farm or per-facility basis, and not a yearly U.S. nationwide maximum.**

IV. THE QUARANTINE AND PRESHIPMENT (QPS) EXEMPTION IS ALSO CLEARLY PROVIDED FOR UNDER THE PROTOCOL AND MUST CONTINUE IN ORDER TO PROTECT INTERNATIONAL TRADE.

Political forces are also pushing for the elimination of the QPS exemption. Methyl bromide is an established and important tool used at the ports to eliminate infestations of pests. It is equally important as a preshipment tool in meeting quarantine requirements of international and interstate shipments.

As trade increases, we are increasingly subjected to incursions of foreign pests and diseases, which can cause enormous economic or environmental damage. We simply cannot afford to

ignore the continuing need for methyl bromide as one very important tool in preventing those infestations.

VI. CONCLUSION

We contend that keeping methyl bromide production levels at 2011 levels would not have a meaningful impact on the restoration of the ozone layer, and those are levels with which agriculture can live. Yet continuing to try to reduce methyl bromide production and use to zero will have a very meaningful impact on the U.S. economy and our ability to continue producing many very important agricultural commodities. We are continuing to try to comply with the Montreal Protocol as it is written, but we need your help.

Perhaps the most troublesome aspect to this story is that while our allocation is being reduced, our competitors in lesser-developed countries will continue to have methyl bromide available for their use for several years. U.S. growers, in an increasingly international economy, need better and better tools to remain competitive.

The U.S. industry has fulfilled the terms of the Montreal Protocol. It is in compliance. Year after year, we have prepared and submitted CUE requests, based on the amounts we need. However, both EPA and MBTOC/TEAP have each year made significant, and, we believe, scientifically unjustified cuts to our requests. The result is that each year since this process started, our allocations have decreased significantly from the allocation of the previous year, and, of course, from our requested amount.

The State Department must defend us under the terms of the protocol or walk away. The Montreal Protocol does not require getting U.S. CUE allocations to “zero-use” over time. The treaty clearly provides that until economic and practical alternatives are found, so long as continued research is being done, the industry should have CUEs.

The United States government must support the U.S. agricultural economy in ensuring that methyl bromide remains available to growers, until suitable alternatives are found and can be implemented. We cannot simply bow to decisions which appear to be predetermined and which will put our agricultural sector at a very significant competitive disadvantage in the international marketplace.

The phase-out of methyl bromide is a critical issue for U.S. agriculture. We thank you for your interest and assistance in reaching a reasonable solution to what is rapidly becoming a crisis for many producers, and the workers they employ across the United States.