

United States Ninth Circuit Court of Appeals Orders EPA to Ban Chlorpyrifos

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On August 9, 2018, the United States Ninth Circuit Court of Appeals ordered the U.S. Environmental Protection Agency (EPA) to ban chlorpyrifos within 60 days. This happened after the EPA denied a 2017 petition to ban the pesticide, so the petitioners took the matter to court.

Chlorpyrifos is an organophosphate pesticide that has been widely used since 1965. While the use of chlorpyrifos was curtailed with the passage of the Food Quality Protection Act (FQPA) in 1996, it is still widely used in agriculture today. Since 2000, the EPA and the registrants of chlorpyrifos have completed several human health risk assessments, most of which resulted in a subsequent label change to make the use of the pesticide safer. Generally, these label changes changed how much personal protective equipment (PPE) is required when working around chlorpyrifos and how it can be applied to crops. Currently, chlorpyrifos's pesticide registration with the EPA is set to expire in 2022.

In 2007, the National Resource Defense Council (NRDC) and Pesticide Action Network North America (PANNA) petitioned the EPA to ban the use of chlorpyrifos by removing all tolerances of the pesticide and revoking all registrations. This petition relies upon the Federal Food, Drug, and Cosmetic Act (FFDCA) to ban chlorpyrifos, stating that the pesticide inhibits the human body from using an enzyme called cholinesterase. This enzyme is essential to the development of the neurological system in children and fetuses. The NRDC and PANNA assert science shows that chlorpyrifos is unsafe for use as it is causing field workers and children to suffer long-term and sometimes permanent effects. The NRDC and PANNA's petition also include

evidence that the pesticide is affecting endangered wildlife in some areas where it is being used, but the main focus of the petition was to try and protect those who might suffer from chlorpyrifos exposure.

The EPA did not respond to this petition until it was ordered to do so by the Ninth Circuit. The EPA's official denial of the petition occurred on April 5, 2017. The denial of the petition argued that, while it is possible that chlorpyrifos could have negative effects upon humans, the science that the petitioners refer to does not meet the standards that the EPA uses. The EPA believes that the assessments that the petitioners cite to should be subject to more peer review to ensure that it is accurate. The EPA also contends that their 10% cholinesterase inhibition exposure limit is adequate to protect those who could become exposed to chlorpyrifos.

After the EPA's denial of their petition, the NRDC and PANNA went to the Ninth Circuit Court of Appeals. The Ninth Circuit found the EPA's denial to be unconvincing, stating that the scientific evidence presented to the EPA should have been enough to show that chlorpyrifos residue on food caused unnecessary neurodevelopmental problems in children. They issued the subsequent injunction ordering EPA to revoke all tolerances and cancel all registrations for chlorpyrifos within 60 days.

Several weeks later, EPA petitioned for rehearing, challenging both the court's jurisdiction and its decision. Currently, amicus briefs have been submitted, and the court is considering the petition.

Sources

[EPA: Chlorpyrifos](#)

[EPA: Response to Petition](#)

[Petition to Revoke All Tolerances and Cancel All Registrations for The Pesticide Chlorpyrifos](#)

[EPA: 2016 Human Health Risk Assessment](#)

[League of United Latin Am. Citizens v. Wheeler, 899 F.3d 814, 817 \(9th Cir. 2018\)](#)

Statutes

[Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 135–136y](#)

[Federal Food, Drug, And Cosmetic Act, § 346a](#)

Additional Materials

[National Agriculture Law Center: Pesticides](#)

[National Agriculture Law Center: Landowner Liability](#)

[National Agriculture Law Center: Environmental Law](#)

[National Agriculture Law Center: Labor](#)

[National Agriculture Law Center: Food Safety](#)

[Supreme Court Considers Preemption of State Law Claims Under the Federal Insecticide, Fungicide, and Rodenticide Act, Pittman \(2005\)](#)