

July 31, 2023

VIA EMAIL and U.S. FIRST-CLASS MAIL

Administrator Michael S. Regan
Regan.Michael@epa.gov
U.S. Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: EPA Advocacy Against Chlorpyrifos Listing Under the Stockholm Convention

Dear Administrator Regan:

The undersigned organizations have been engaged in longstanding advocacy to protect people from acute poisonings and neurodevelopmental harm from chlorpyrifos. When the Environmental Protection Agency (“EPA”) failed to put required health protections in place, we brought several lawsuits against the agency leading to court decisions that ultimately led EPA to revoke all food tolerances for chlorpyrifos and to initiate cancellation proceedings. We are now defending those actions alongside the agency.

We are sending this letter to express our extreme dismay that EPA has been advocating against the listing of chlorpyrifos as a persistent organic pollutant (“POP”) under the Stockholm Convention, the international treaty that seeks to eliminate or restrict the production and use of substances that persist in the environment and pose risks to our health or the environment. EPA’s arguments on the international stage are at odds with its domestic actions and the science. We urge EPA to align its positions at the upcoming 19th Stockholm Convention meeting with its domestic actions and to support listing chlorpyrifos under the Stockholm Convention.

I. EPA’s Actions to Protect People in the U.S. from Harm from Chlorpyrifos.

On August 18, 2021, after five lawsuits and numerous court orders, the most recent finding that “this delay tactic was a total abdication of the EPA’s statutory duty” to ensure the safety of our food, *see League of United Latin American Citizens v. Regan*, 996 F.3d 673, 678 (9th Cir. 2021) (“*LULAC*”), EPA issued a final rule revoking all tolerances for chlorpyrifos residues on food. 86 Fed. Reg. 48,315 (Aug. 30, 2021). EPA revoked the tolerances because “EPA is unable to conclude that the risk from aggregate exposure from the use of chlorpyrifos meets the safety standard” in the Food Quality Protection Act. *Id.*

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In EPA's press release, you as Administrator heralded this action:

Today EPA is taking an overdue step to protect public health. Ending the use of chlorpyrifos on food will help to ensure children, farmworkers, and all people are protected from the potentially dangerous consequences of this pesticide, . . . After the delays and denials of the prior administration, EPA will follow the science and put health and safety first.

The Ninth Circuit decision precipitating the ban grew out of a 2007 petition filed by Natural Resources Defense Council and Pesticide Action Network of North America to ban use of chlorpyrifos on food because of neurodevelopmental harm to children from exposures far lower than EPA's regulatory standard for acute poisoning risks—10% cholinesterase inhibition measured in red-blood cells. Upon reviewing the growing body of scientific evidence, both EPA and its Scientific Advisory Panel ("SAP") repeatedly found that prenatal exposure to chlorpyrifos causes learning disabilities, behavioral disorders, reduced IQ, and other neurodevelopmental harm and that such harm occurs from chlorpyrifos exposures below those that cause 10% cholinesterase inhibition. In the face of the strong scientific record and these findings, the Ninth Circuit held:

The EPA has not determined, and on this record reasonably could not determine to a "reasonable certainty" that aggregate chlorpyrifos exposures under the current tolerances pose no risk of harm. Therefore, by statutory definition, the present tolerances are not safe.

LULAC, 996 F.3d at 701.

It took far too long, but the tolerances expired and chlorpyrifos could no longer be used on our food beginning in March 2022. EPA is defending the tolerance revocation in a lawsuit filed by Gharda Chemicals International and numerous agribusiness organizations. *Red River Valley Sugarbeet Growers Ass'n v. Regan*, No. 22-1422 (8th Cir.). It also has initiated proceedings to cancel the remaining registrations of chlorpyrifos for food uses. Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations, 87 Fed. Reg. 76,474 (Dec. 14, 2022). In both proceedings, we are supporting EPA and the chlorpyrifos food ban.

II. EPA's Past Advocacy Against Listing Chlorpyrifos as a POP.

Even though the United States is not a party to the Stockholm Convention, it has exploited its role as an observer to sow seeds of doubt about the harms from chlorpyrifos and urge member countries to oppose adding chlorpyrifos to the list of regulated POPs. Some of that advocacy is detailed in an article recently published in ProPublica: "The U.S. Banned Farmers From Using a Brain-Harming Pesticide on Food. Why Has It Slowed a Global Ban? (July 6, 2023)

(<https://www.propublica.org/article/chlorpyrifos-ban-epa-official-kovner-pesticide>). It is also documented in the Reports of the 17th and 18th Meetings of the Persistent Organic Chlorpyrifos POPs Letter to Administrator Regan

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Pollutants Review Committee (“POPRC”)¹ and the Earth Negotiation Bulletin’s Summary Report of the 18th Meeting of the Persistent Organic Pollutants Review Committee to the Stockholm Convention (POPRC-18) (Sept. 26–30, 2022), at <https://enb.iisd.org/stockholm-convention-pops-review-committee-18-summary> (Oct. 3, 2022) (“ENB Summary”).

Over the United States’ objections, the POPRC decided at its 17th meeting in 2021 that chlorpyrifos met the Annex D screening criteria for listing. Those criteria address the chemical’s persistence, bioaccumulation, potential for long-range transport, and adverse effects on human health and the environment.

This led to the preparation of a draft risk profile to evaluate listing chlorpyrifos for consideration by the POPRC at its 18th meeting in September 2022. The draft risk profile concluded that chlorpyrifos met the Stockholm Convention’s listing criteria.

In the POPRC’s review of the draft risk profile, the U.S. delegation played a key role in preventing the POPs listing that year. The U.S. delegation consisted entirely of EPA staff with two members of the delegation taking the lead in presenting arguments against the POPs listing: Karissa Kovner, Senior Policy Advisor for International Affairs in the Office of Chemical Safety and Pollution Prevention, and Monique Perron, Senior Science Advisory in the Office of Pesticide Programs.

EPA did not question the significant adverse effects of chlorpyrifos exposure on human health and aquatic life. Indeed, it could not credibly question these harms in light of its findings leading to revocation of the chlorpyrifos tolerances and the National Marine Fisheries Service’s 2022 biological opinion determining that chlorpyrifos is likely to jeopardize the survival and recovery of salmon, steelhead, other marine fish, and Southern Resident Killer Whales, which are all on the U.S. Endangered Species Act list. Nor did EPA question that chlorpyrifos has been detected in human breast milk and in remote environments far from areas where it was sprayed, including in the Arctic and in caribou, polar bears, ring seals, and other Arctic wildlife.

Instead, during the POPRC deliberations, the EPA delegation argued that the science was too uncertain to justify the POPs listing and questioned whether the chlorpyrifos concentrations in remote areas are high enough to lead to significant adverse effects. EPA’s arguments depart from the Stockholm Convention, which provides that “[l]ack of full scientific certainty shall not

¹ *Report of the Persistent Organic Pollutants Review Committee on the Work of its Seventeenth Meeting*, Stockholm Convention on Persistent Organic Pollutants UNEP/POPS/POPRC.17/13 (Jan. 2022); *Report of the Persistent Organic Pollutants Review Committee on the Work of its Eighteenth Meeting*, Stockholm Convention on Persistent Organic Pollutants UNEP/POPS/POPRC.18/11 (Sept. 2022); Annex: Comments and Responses Relating to the Draft Risk Profile for Chlorpyrifos, Stockholm Convention on Persistent Organic Pollutants UNEP/POPS/POPRC.18/INF/9 (Sept. 2022).

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prevent the proposal from proceeding.” Stockholm Convention on Persistent Organic Pollutants

art. I, May 22, 2001, art. 8(7)(a), 40 I.L.M. 532 (2001); *see also id.*, art. 8(9) (“The Conference of the Parties, taking due account of the recommendations of the Committee, including any scientific uncertainty, shall decide, in a precautionary manner, whether to list the chemical, and specify its related control measures, in Annexes A, B and/or C.”).

EPA’s arguments also are at odds with the scientific findings made by EPA and the SAP in reviewing the science and revoking chlorpyrifos tolerances. First, EPA repeatedly urged that the chlorpyrifos risk profile should be based solely on cholinesterase inhibition, claiming that cholinesterase inhibition is protective of other neurotoxic effects and modes of action. This assertion cannot be reconciled with a state-of-the-art epidemiology study, credited by EPA and its SAP, that found that in utero chlorpyrifos exposures caused neurodevelopmental harm in the children, even when the mothers experienced no measurable cholinesterase inhibition. Based on this study and their full review of the science, EPA and the SAP repeatedly found that chlorpyrifos exposures below those that cause 10% cholinesterase inhibition are correlated with lifelong neurodevelopmental harm. In 2016, when EPA derived an endpoint to protect children from such neurodevelopmental harm, EPA’s health risk assessment found all exposures to chlorpyrifos unsafe. And in 2018, the California Department of Pesticide Regulation concluded, based on review of five animal studies, that chlorpyrifos causes neurotoxicity at exposures below those that result in 10% cholinesterase inhibition.

Second, even though EPA acknowledged the strength of three U.S. epidemiology studies correlating low-level chlorpyrifos exposures to learning disabilities and other life-long harms, it asserted that the SAP had identified several limitations and uncertainties in the studies, particularly with respect to exposure measures. This assertion conspicuously omits that both EPA and the SAP repeatedly found that the studies correlated exposures below those that cause 10% cholinesterase inhibition with neurodevelopmental harm to children. It also fails to mention that the Ninth Circuit credited these EPA and SAP findings in concluding that EPA could not find exposures that cause 10% cholinesterase inhibition safe in light of this harm. The Ninth Circuit ruled that the fact that such harm has occurred means 10% cholinesterase inhibition is not a safe exposure level and EPA cannot find reasonable certainty of no harm to children from such exposures, the legal standard for retaining food tolerances under the Food Quality Protection Act.²

In questioning whether exposures to chlorpyrifos from long-range transport can lead to significant adverse health effects, EPA seemed to be focused on whether they would cause acute

² In its critique of the chlorpyrifos draft risk profile, EPA cited to its 2020 human health risk assessment that reverted to 10% cholinesterase inhibition as the regulatory endpoint based on uncertainties in the science, but that assessment preceded the Ninth Circuit’s decision discrediting that approach and necessitating the revocation of chlorpyrifos food tolerances. In addition, EPA has never addressed the extensive public comments questioning the scientific validity the 2020 assessment’s reliance on 10% cholinesterase inhibition without providing additional safeguards to protect children from neurodevelopmental harm from lower exposures. Chlorpyrifos POPs Letter to Administrator Regan

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poisonings due to cholinesterase inhibition. Instead, EPA should be focused on the need to prevent far lower chlorpyrifos exposures that put children at risk of learning disabilities,

behavioral disorders, reduced IQ, and other neurodevelopmental harm. The Ninth Circuit insisted on such an approach based on EPA's own findings and those of its SAP that low exposures to chlorpyrifos cause such lifelong harm to children. EPA heeded the Ninth Circuit in revoking chlorpyrifos tolerances and yet it made arguments rejected by the Ninth Circuit in arguing against a chlorpyrifos POPs listing.³

III. EPA Should Support Listing Chlorpyrifos at the 19th Meeting of the Stockholm Convention.

The POPRC decided to defer consideration of listing chlorpyrifos until the 19th meeting in October 2023. While the deferral unnecessarily delays a POPs listing and puts children at risk of serious learning disabilities and neurodevelopmental harm, it affords EPA an opportunity to align its international positions with its domestic actions.

Domestically, EPA is defending its revocation of chlorpyrifos tolerances because it could not find the pesticide safe for children and it has initiated action to cancel the remaining registrations for food use. In taking these actions, EPA heeded the Ninth Circuit holding that EPA could maintain tolerances only if it could find chlorpyrifos safe, which it could not do based on the repeated findings of harm to children from low-level exposures made by EPA and its SAP.

Gharda Chemicals International, an Indian company, is challenging the tolerance revocations and cancellation of its chlorpyrifos registrations. After California ended most chlorpyrifos uses in 2020 and Corteva/Dow Agrosiences announced that it would stop making chlorpyrifos, Gharda increased its sales of chlorpyrifos in the United States and became the largest seller of chlorpyrifos. EPA and the undersigned organizations are defending EPA's actions against challenges brought by Gharda and growers, yet on the international stage, EPA is echoing positions offered by India in opposition to a POPs listing.

EPA has banned food uses of chlorpyrifos in this country, safeguarding our food, drinking water, and the health of workers and communities. It should not be erecting obstacles to extending similar protections to vulnerable populations in other countries. This Administration has made commitments to promote environmental justice and protect the most vulnerable and most exposed populations. Its advocacy against listing chlorpyrifos as a POP run counter to these commitments.

³ EPA also opposed listing chlorpyrifos without concurrently considering listing chlorpyrifos methyl. While listing chlorpyrifos-methyl would be appropriate, linking the two would slow down the listing of chlorpyrifos and delay protecting children from the risk of neurodevelopmental harm from chlorpyrifos exposures.

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The Stockholm Convention was likewise motivated by disparate health effects in developing countries and in particular by harms to women and through them future generations. It specifically acknowledged that "the Arctic ecosystems and indigenous communities are particularly at risk because of the biomagnification of persistent organic pollutants and that

contamination of their traditional foods is a public health issue.” At the 18th POPRC meeting, Pesticide Action Network, an observer, stressed the need to protect vulnerable populations from harm, emphasizing detections of chlorpyrifos in the Arctic environment. ENB Summary at 6. The Nunavik Regional Board of Health and Social Services appealed to members not to wait until Inuit people get sick and thus make them the “canaries of the world.” *Id.* And the Inuit Circumpolar Council explained that chlorpyrifos adds to an already large contaminant burden in the Arctic and failing to list chlorpyrifos will allow it to continue to pose a risk for an even longer time. *Id.* In addition, International POPs Elimination Network/Alaska Community Action on Toxics stated: “it is irrefutable that even low exposures harm developing brains, and, considering its potential to bioaccumulate, there is a high risk for significant adverse effects to human health.” *Id.*; *see also id.* (noting the pressing need to act given the Stockholm Convention’s special obligation to the Arctic environment and human health).

We urge EPA to change course and reposition the United States as a force for environmental justice on the global stage. At the next Stockholm Convention meeting in October 2023, the proposal to list chlorpyrifos will again be on the agenda. EPA should support this proposal.

Respectfully submitted,



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On behalf of

League of United Latin American Citizens
Natural Resources Defense Council
Pesticide Action Network North America
California Rural Legal Assistance Foundation
Farmworker Association of Florida
Farmworker Justice

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Labor Council for Latin American Advancement
Learning Disabilities Association of America
Pineros y Campesinos Unidos del Noroeste
United Farm Workers
UFW Foundation
Alianza Nacional de Campesinas

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