

No. 14-72794

ORAL ARGUMENT HELD JUNE 1, 2015

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE PESTICIDE ACTION NETWORK NORTH AMERICA, and
NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

STATUS REPORT

Respondent United States Environmental Protection Agency (“EPA”) respectfully submits this Status Report pursuant to this Court’s June 10, 2015 Order [Dkt No. 17].

In the course of reviewing the public comments on the December 29, 2014 Revised Human Health Risk Assessment for Chlorpyrifos (“Assessment”), EPA has concluded that it intends to partially grant the 2007 Administrative Petition submitted by Petitioners Pesticide Action Network North America and Natural Resources Defense Council, Inc. (collectively “Petitioners”) by proposing to

revoke all chlorpyrifos tolerances. This position is based on several considerations, including the risks arising from exposure to residues of chlorpyrifos in drinking water identified in the Assessment and initial exchanges with the registrants of chlorpyrifos pesticides regarding needed risk mitigation.

The Federal Food Drug and Cosmetic Act requires EPA, when making determinations regarding the safety of tolerances, to consider the contribution of consumption of pesticide residues in drinking water to overall exposure. The Assessment concluded that, in certain watersheds through the United States, the use of chlorpyrifos may result in residues in drinking water that, together with other exposures, preclude a determination that there is a reasonable certainty of no harm to people who would be drinking such water. *See* EPA Status Report, Attach. 1 at 84-96 (Jan. 7, 2015, Dkt. No. 8-2). This would apply to the determination for every chlorpyrifos tolerance. In its March 26, 2015 provisional response (the “Provisional Response”), EPA indicated that it agreed with Petitioners that some additional risk mitigation action was necessary to reduce risks from exposure to chlorpyrifos. At that time, however, EPA expressed its expectation that it was likely to be able to address these risks through means other than either revocation of all tolerances or cancellation of all registrations. Therefore, EPA proposed a complete denial of the petition. While EPA still hopes that registrants will agree to make all the necessary changes, EPA is now less

confident that it can achieve necessary risk mitigation outside of formal regulatory proceedings.

Although EPA now intends to grant the petition by seeking revocation of all tolerances, EPA continues to believe that it is important to further determine, as much as possible, where at-risk watersheds are located throughout the country. As explained in the Provisional Response, EPA is currently working on a refined water assessment that, when completed, should allow for the identification of these at-risk watersheds. EPA expects to complete that assessment later in 2015. With such information, EPA can develop appropriate risk mitigation for these watersheds, such as prohibiting all use or changing the way chlorpyrifos is allowed to be used in a watershed.

Further, EPA notes that its Assessment also raised concerns about the risks to farmworkers and other agricultural employees occupationally exposed to chlorpyrifos (which is an issue not raised in the Petition). EPA also believes that additional restrictions are needed to mitigate these risks, but, like the risks from drinking water, may require complex regulatory proceedings.

In order to accommodate completion of the drinking water assessment, negotiations with registrants to achieve necessary changes outside of a formal regulatory proceeding, and the development of a proposed revocation rule

appropriate for Federal Register publication if needed, EPA proposes the following schedule:

EPA intends to grant the Petition by publishing in the Federal Register not later than April 15, 2016, a proposed rule pursuant to 21 U.S.C. section 346a(d)(4)(A)(ii) to revoke all chlorpyrifos tolerances to address drinking water exposure concerns in small sensitive watersheds throughout the country.

If, prior to April 15, 2016, the chlorpyrifos registrants do agree to take necessary action, i.e., amending the product labeling of chlorpyrifos products, to address unsafe drinking water exposures, EPA will submit to the Court within 10 days of any such agreement a status report outlining the registration changes and how such changes obviate the need for further regulatory action under the FFDCA. EPA shall then publish a final order denying any remaining portions of the petition not later than 30 days following the submission of the status report outlining why registration changes have rendered a tolerance revocation action unnecessary.

Dated: June 30, 2015

Respectfully submitted,

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s/ Erica M. Zilioli
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 30, 2015. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Erica M. Zilioli