

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

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| In re Gharda Chemicals International, Inc., and Red River Valley Sugarbeet Growers Association, et al. |) | |
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| |) | FIFRA Appeal No. 23-02 |
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| Docket No. FIFRA-HQ-2023-0001 |) | |
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**INTERVENORS’ RESPONSE IN OPPOSITION TO PETITIONERS’ MOTION FOR
APPEAL**

A group of thirteen health, farmworker, civil rights, and labor nonprofit organizations,¹ collectively “Intervenors,” hereby submit this response to the appeal by Petitioners Gharda Chemicals International, Inc. (“Gharda”) and a group of grower organizations (together with Gharda, “Petitioners”) of Administrative Law Judge (“ALJ”) Coughlin’s order denying a stay to the Environmental Appeals Board (“EAB” or “Board”). Intervenors submit this response to show that staying the cancellation proceedings would be deleterious to vital public interests for two reasons. First, chlorpyrifos causes severe and lifelong harm to farmworkers and neurodevelopmental harm in children that necessitates cancellation of all food-use registrations. Second, Gharda’s chlorpyrifos products labeled for food uses will remain in commerce and

¹ Intervenor organizations are League of United Latin American Citizens, Pesticide Action Network North America, Natural Resources Defense Council, California Rural Legal Assistance Foundation, Farmworker Association of Florida, Farmworker Justice, GreenLatinos, Labor Council for Latin American Advancement, Learning Disabilities Association of America, Pineros y Campesinos Unidos del Noroeste, Alianza Nacional de Campesinas, United Farm Workers, and United Farm Workers Foundation.

thereby pose a danger to the public until a final cancellation order provides for their disposition. For these reasons, Intervenors request that the Board deny Petitioners' Motion for Appeal.

I. CHLORPYRIFOS IS A NEUROTOXIC PESTICIDE THAT CAUSES SERIOUS NEURODEVELOPMENTAL HARM TO CHILDREN AND ACUTE POISONINGS OF WORKERS.

For a decade-and-a-half, Intervenors have advocated for banning chlorpyrifos because of its acute toxicity and neurodevelopmental harm to children, leading to the Ninth Circuit's holding in *League of United Latin American Citizens v. Regan (LULAC II)*, 996 F.3d 673 (9th Cir. 2021). There, the Ninth Circuit held that EPA must revoke chlorpyrifos tolerances unless it could find them safe. *Id.* at 702. EPA could not—and indeed cannot—make such a safety determination due to the grave harms associated with exposure to chlorpyrifos for children and farmworkers.

Chlorpyrifos causes learning disabilities and neurodevelopmental delay in children from exposures at levels far lower than EPA's tolerances and registrations allow. Children exposed to chlorpyrifos show significant delays in mental and psychomotor development, attention disorders and behavior problems in early childhood, impaired cognition at six to eight years of age, and reduced IQ. *Id.* at 682.

Chlorpyrifos also poses unreasonable adverse risks to workers by causing acute pesticide poisoning, with symptoms such as vomiting, dizziness, difficulty breathing, blurred vision, and even seizures and paralysis in some situations. Workers who handle the pesticide or enter fields after spraying are most at risk of acute poisonings. *See e.g.*, Intervenors' Mot. to Intervene, Docket No. FIFRA-HQ-2023-0001 (Mar. 28, 2023), filing n. 9, Decl. of Reyna Lopez, ¶ 5 Ex. 1 at 105.

In *LULAC II*, the Ninth Circuit directed EPA to revoke or modify all chlorpyrifos tolerances if it cannot find a reasonable certainty of no harm from aggregate exposure to chlorpyrifos. The court also ordered EPA to “modify or cancel related [Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”)] registrations for food use in a timely fashion consistent with the requirements of [the Federal Food, Drug, and Cosmetic Act (“FFDCA”)].” *Id.* at 704. EPA could not conclude that chlorpyrifos was safe, and so it revoked chlorpyrifos tolerances effective on February 28, 2022. Chlorpyrifos: Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) (the “Final Rule”). Subsequently, in compliance with the Ninth Circuit’s order, EPA issued the Notice of Intent to Cancel that gave rise to this administrative proceeding. Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations, 87 Fed. Reg. 76,474 (Dec. 14, 2022) (“NOIC”).

II. DENYING A STAY IS IN THE PUBLIC INTEREST BECAUSE GHARDA CHLORPYRIFOS PRODUCTS WITH LABELS ALLOWING HARMFUL FOOD USES WILL REMAIN IN COMMERCE UNTIL GHARDA’S FOOD-USE REGISTRATIONS ARE CANCELLED.

When Congress unanimously passed the Food Quality Protection Act (“FQPA”) in 1996, it made human health the singular focus of the FFDCA. The FFDCA’s health-protective safety standard is incorporated into FIFRA. 7 U.S.C. § 136(bb)(“[t]he term “unreasonable adverse effects on the environment” means . . . “a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 346a of title 21.”). Under that safety standard, EPA can leave a tolerance in effect only if it finds that tolerance safe. *See LULAC II* at 693 n.112. Thus, where a pesticide is reasonably expected to result in residues in or on food without a requisite tolerance, it violates FIFRA, and any “registrations bearing labeling for food use must be modified or cancelled, pursuant to FIFRA section 6(b).” NOIC, 87 Fed. Reg. at 76,475. For this reason, EPA’s issuance of the Notice of Intent to Cancel Gharda’s

chlorpyrifos food-use registrations complies with the Ninth Circuit's directive and EPA's legal duties with respect to unsafe food-use pesticides.

Here, Gharda's chlorpyrifos products have labels that allow use on food crops. But without tolerances, Gharda's products cannot lawfully be used on food. Such products are misbranded, and it is unlawful to sell or distribute such misbranded products. Further, existing stocks of Gharda's chlorpyrifos products have not been recalled. Thus, Farmers and growers who previously bought Gharda's products might unwittingly apply chlorpyrifos to food crops based on the product's label, thereby endangering the public and putting children and farmworkers at risk of serious harm. A final order cancelling Gharda's chlorpyrifos food-use registrations would address disposition of existing stocks by prohibiting their use and allowing their movement through commerce for the sole purpose of returning them to Gharda or disposing them in compliance with state regulations. *See Chlorpyrifos; Notice of Intent to Cancel Certain Pesticide Registrations and Amend Registrations to Terminate Certain Uses*, 88 Fed. Reg. 27,882, 27,884 (May 3, 2023). Unlike other chlorpyrifos registrants that have agreed to voluntarily cancel all their food-use registrations, Gharda has not instituted a product call-in program for return of its misbranded chlorpyrifos food-use products. *See id.*

The expeditious resolution of the administrative hearing on the notice of intent to cancel Gharda's food-use chlorpyrifos registrations is vital to the public interest—the more time it takes for Gharda's registrations to be cancelled, the more time the public is at risk of being exposed to harmful exposures from the use of chlorpyrifos. Because “the final order concerning cancellation of the product is not issued until after an administrative hearing,” the longer this proceeding drags on, the longer Gharda's misbranded chlorpyrifos products will remain in the hands of end-

users who may apply them and expose workers and children to risks of serious harm. See NOIC, 87 Fed. Reg. at 76,475.

Accordingly, it is in the public interest for the cancellation proceeding to move forward and result in a cancellation of Gharda's food-use chlorpyrifos registrations, which will get existing stocks of Gharda's products out of circulation. Such a result would prevent exposing workers, communities, and children in particular to acute poisonings and neurodevelopmental harm from exposure to chlorpyrifos.

CONCLUSION

We respectfully request that the Board deny Petitioners' Motion for Appeal.

Dated: June 12, 2023.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Intervenors' Response in Opposition to Petitioners' Motion for Appeal**, dated June 12, 2023, was filed electronically with the U.S. Environmental Protection Agency Environmental Appeals Board E-Filing system, with a copy via electronic mail to the following:

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