

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In re FIFRA Section 6(b) Notice of Intent to Cancel Pesticide Registrations for Chlorpyrifos Products)
Gharda Chemicals International, Inc. and Red River Valley Sugarbeet Growers Association, et al.,)
Petitioners)

Docket No. FIFRA-HQ-2023-0001

**VERIFIED WRITTEN STATEMENT OF WITNESS, DANA FRIEDMAN, IN SUPPORT
OF RESPONDENT'S NOTICE OF INTENT TO CANCEL**

I. Background

I, Dana Friedman, declare under penalty of perjury that the following statements are true and correct to the best of my knowledge and belief and that they are based upon my personal knowledge, information contained in the records of Respondent, the United States Environmental Protection Agency (“EPA”), and/or information supplied to me by EPA employees under my supervision and in other EPA offices. *See 28 U.S.C. § 1746.*

I am currently the Chief of the Risk Management and Implementation Branch 1 (“RMIB1”) of the Pesticide Reevaluation Division (“PRD”) in EPA’s Office of Pesticide Programs (“OPP”). I have worked for EPA for over 15 years. Since coming to the Agency in August 2007, I have served in various positions within PRD, including as a Chemical Review Manager in the Risk Management and Implementation Branch 2 (“RMIB2”) of PRD from August 2007 to October 2016, as Acting Team Leader of RMIB2 from March 2015 to July 2015, and as a Senior Regulatory Advisor in RMIB2 from October 2016 to July 2019. I was the Acting

Chief of RMIB1 from July 2018 to November 2018. I have been the Chief of RMIB1 since July 2019, leading a staff of 11 individuals on the review of over 50 conventional pesticide cases in various phases of the registration review process.

PRD is the division within OPP assigned with the responsibility to develop EPA's regulatory position regarding the reevaluation of conventional pesticides that are currently registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y ("FIFRA"). Part of PRD's responsibility includes overseeing the periodic "registration review" of conventional pesticides as required by section 3(g) of FIFRA, 7 U.S.C. § 136a(g). Within OPP, RMIB1 is responsible for reevaluating chlorpyrifos and taking associated actions that stem from that reevaluation.

This verified statement is filed in support of EPA's December 14, 2022 Notice of Intent to Cancel ("NOIC") the registrations of three pesticide products containing the insecticide chlorpyrifos pursuant to section 6(b) of FIFRA, 7 U.S.C. § 136d(b), which identifies Petitioner Gharda Chemicals International, Inc. ("Gharda") as the registrant for the products subject to the NOIC. Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations, 87 Fed. Reg. 76,474 (Dec. 14, 2022). This verified statement constitutes my direct statement as a fact witness in the hearing prompted by a Request for Hearing and Statement of Objections and Request for Stay filed by Petitioner Gharda on January 13, 2023 ("Gharda's Objections") and a Request for Hearing and Statement of Objections filed by a collection of grower groups ("Grower Petitioners") on January 13, 2023 ("Grower Petitioners' Objections"), pursuant to the Presiding Official's June 5, 2023 Order Scheduling Hearing and Prehearing Procedures (the "Scheduling Order").

II. Chlorpyrifos and Petitioner Gharda’s Registrations

Chlorpyrifos is a broad-spectrum, chlorinated organophosphate insecticide that is registered for a wide variety of non-food and, historically, food uses. Petitioner Gharda has three chlorpyrifos registrations that allow for use on food crops. Chlorpyrifos Technical (EPA Registration Number 93182-3) is a manufacturing use product that can be used to produce other chlorpyrifos pesticide products registered for the uses permitted on this Chlorpyrifos Technical label, including on food. Pilot 4E Chlorpyrifos Agricultural Insecticide (EPA Registration Number 93182-7) and Pilot 15G Chlorpyrifos Agricultural Insecticide (EPA Registration Number 93182-8) are both end-use products that can be applied to the foods listed on their labels. These registrations are part of the chlorpyrifos registration review case covered by RMIB1.

III. EPA’s Revocation of Chlorpyrifos Tolerances and Petitioner Gharda’s Failure to Correct its Registrations

On April 29, 2021, the U.S. Court of Appeals for the Ninth Circuit ruled against EPA in litigation concerning the chlorpyrifos tolerances. *See League of United Latin American Citizens et al., v. Regan*, 996 F.3d 673 (9th Cir. 2021) (“*LULAC*”). The court ordered EPA to issue a final rule in which the Agency would either revoke the tolerances (if it could not make the requisite safety finding to leave tolerances in place) or modify the existing chlorpyrifos tolerances, provided that the Agency concurrently issued a safety determination supporting the modified tolerance. The court also ordered EPA to modify or cancel pesticide registrations consistent with its tolerance decision “in a timely fashion.” *LULAC* at 704. Upon determining that the tolerances were unsafe, EPA published the final rule revoking all chlorpyrifos tolerances (“Final Rule”) on August 30, 2021. 86 Fed. Reg. 48,315. Consistent with Federal Food, Drug, and Cosmetic Act (“FFDCA”) section 408(g)(2), EPA provided an opportunity to file objections

to the Final Rule and seek an evidentiary hearing on those objections. 21 U.S.C. § 346a(g)(2); see also 40 C.F.R. § 178.32(b). In response to the Final Rule, several objections, hearing requests, and requests to stay the Final Rule were filed by Petitioner Gharda, the Grower Petitioners, and other parties representing a wide variety of growers and pesticide users. On February 28, 2022, EPA published an order denying all objections, hearing requests, and requests to stay the Final Rule in the Federal Register (the “Denial Order”). 87 Fed. Reg. 11,222. EPA’s publication of the Denial Order completed the Agency’s administrative process for the Final Rule. Pursuant to the terms of the Final Rule, all tolerances for chlorpyrifos expired on February 28, 2022.

Upon the expiration of tolerances for chlorpyrifos, EPA sent letters to all registrants and supplemental distributors of then-active chlorpyrifos registrations that the Agency had determined were labeled for use on food. Those letters recommended that these parties consider certain cancellation and/or label amendments options for those registrations. EPA sent such a letter to Petitioner Gharda on March 1, 2022, after EPA’s publication of the Denial Order. In this letter, EPA reminded Petitioner Gharda that all tolerances were revoked and identified Petitioner Gharda’s products that were affected by the Final Rule. For products where all uses were impacted by the tolerance revocation, EPA requested that Petitioner Gharda submit a voluntary cancellation letter by March 30, 2022. For products where only a subset of uses was impacted by the tolerance revocation, EPA noted that Petitioner Gharda may amend the registration(s) to remove impacted uses, in which case EPA requested that Petitioner Gharda submit a formal letter expressing Petitioner Gharda’s intention to submit label amendments by March 30, 2022, with the label amendments and voluntary cancellation of impacted uses requested within 60 days of the tolerance expiration date (i.e., April 29, 2022). If, in the alternative, Petitioner Gharda

preferred to cancel any products where only a subset of uses was impacted by the tolerance revocation, EPA requested that Petitioner Gharda submit a voluntary cancellation letter by March 30, 2022. The Agency noted that if the above-described requests were not submitted, EPA would initiate cancellation proceedings by issuing a NOIC under section 6(b) of FIFRA. 7 U.S.C. § 136d(b).

On March 30, 2022, Petitioner Gharda submitted a request for voluntary cancellation for some uses and some label amendments which, if approved, would result in food uses remaining in place for those registered products. Petitioner Gharda specifically noted that “Gharda is not in a position to voluntarily cancel its registration for [certain food uses] at this time” in light of the litigation concerning the Final Rule pending before the U.S. Court of Appeals for the Eighth Circuit. *Red River Valley Sugarbeet Growers Ass ’n v. Regan*, Nos. 22-1422, 22-1530 (8th Cir. argued Dec. 15, 2022). Later, on June 14, 2022, Petitioner Gharda submitted amended product labels to EPA for approval that were consistent with its stated intent to retain certain food uses. Specifically, those proposed amended labels sought to retain use on the following foods: alfalfa, apple, asparagus, cherry, citrus, cotton, peach, soybean, sugar beet, strawberry, and wheat. There are no tolerances to cover residues of chlorpyrifos in or on the foods listed on Petitioner Gharda’s amended label due to the Final Rule.

On June 9, 2023, EPA published a notice in the Federal Register titled Chlorpyrifos; Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations to Terminate Certain Uses (the “Notice of Receipt”). 88 Fed. Reg. 37,875. The Notice of Receipt includes the March 30, 2022 request from Petitioner Gharda to voluntarily terminate some – but not all – food uses of the three pesticide registrations subject to the NOIC. Even if EPA ultimately approves Petitioner Gharda’s request to terminate these specified food

uses, the registrations subject to the NOIC would continue to allow for use on food products despite the absence of tolerances for chlorpyrifos. EPA, therefore, does not intend to approve the amended product labels submitted by Petitioner Gharda on June 14, 2022.

IV. EPA’s Issuance of the NOIC

FIFRA section 6(b) states that the Agency may issue a notice of its intent to cancel a registration of a pesticide product whenever it appears either that “a pesticide or its labeling or other material required to be submitted does not comply with FIFRA, or when used in accordance with widespread and commonly recognized practice, the pesticide generally causes unreasonable adverse effects on the environment.” 7 U.S.C. § 136d(b).

All tolerances for chlorpyrifos had been revoked and Petitioner Gharda was unwilling to submit the necessary requests for voluntary cancellation and/or label amendments to remove all food uses from their registered chlorpyrifos products. EPA therefore proceeded—consistent with its March 1, 2022 letter to Petitioner Gharda—to draft the NOIC pursuant to FIFRA section 6(b) in order to facilitate the cancellation of the chlorpyrifos registrations in question. 7 U.S.C. § 136d(b). Proceeding with cancellation under section 6(b) was consistent with the *LULAC* court’s mandate to cancel food uses associated with revoked tolerances “in a timely fashion” and with EPA’s statutory responsibilities to ensure that only pesticides that meet the FIFRA standard for registration remain registered.

In accordance with the requirements in section 6(b) of FIFRA, EPA furnished a draft of the NOIC to the Secretary of the USDA for comment on August 11, 2022. EPA determined that the cancellation action would not have an impact on the agricultural economy. Even if the products in question were not cancelled, they still could not be used on food intended to be distributed in interstate commerce due to the tolerance revocation; the same economic impact

would result with or without the NOIC. EPA thus did not provide an analysis of the impact on the agricultural economy to USDA with the draft NOIC. After receiving USDA's comments, EPA provided a response to those comments in the NOIC published on December 14, 2022, which was more than 60 days after sending the draft NOIC to USDA. Because the cancellation action did not affect a public health use, EPA did not provide the draft NOIC to the Secretary of the Department of Health and Human Services ("HHS"). Finally, as required under section 6(b) of FIFRA, EPA submitted the draft NOIC to the FIFRA Scientific Advisory Panel ("SAP") and requested waiver of their review because the NOIC reflected an administrative action and did not present any scientific issues for review. The SAP concurred and waived its review on August 23, 2022. 7 U.S.C. § 136w(d).

EPA provided instructions in the NOIC on how a registrant or other person adversely affected by the cancellation of the Gharda products could request a hearing.

III. Conclusion

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

Dated: June 28, 2023

/s/Dana Friedman
Dana Friedman, Chief
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing VERIFIED WRITTEN STATEMENT OF WITNESS, DANA FRIEDMAN, dated June 28, 2023 was filed electronically with the U.S. Environmental Protection Agency, Office of Administrative Law Judges E-filing system, with a copy via electronic mail to the following:

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Dated: July 14, 2023

/s/ Aaron Newell

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