

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

<b>In re FIFRA Section 6(b) Notice of Intent to</b>	)	
<b>Cancel Pesticide Registrations for</b>	)	
<b>Chlorpyrifos Products</b>	)	
	)	
<b>Gharda Chemicals International, Inc. and</b>	)	<b>Docket No. FIFRA-HQ-2023-0001</b>
<b>Red River Valley Sugarbeet Growers</b>	)	
<b>Association, et al.,</b>	)	
	)	
<b>Petitioners.</b>	)	

**MOTION TO INTERVENE**

by

**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**

March 28, 2023

Patti A. Goldman  
Noorulanne Jan  
Earthjustice  
810 3rd Avenue, Suite 610  
Seattle, WA 98104  
T: (206) 343-7340  
pgoldman@earthjustice.org  
njan@earthjustice.org

## INTRODUCTION AND RELIEF REQUESTED

Pursuant to 40 C.F.R § 164.31 and § 164.60, thirteen nonprofit organizations (collectively, “Proposed Intervenors”),<sup>1</sup> with a unified commitment to protecting the health of farmworkers, their communities, and children with learning disabilities, hereby request leave to intervene in this proceeding challenging a decision by the U.S. Environmental Protection Agency (“EPA” or the “Agency”) to cancel the remaining chlorpyrifos food use registrations held by Gharda Chemicals International, Inc. (“Gharda”).

Proposed Intervenors are farmworker, health, and civil rights organizations that have advocated for over 15 years to end all food uses of chlorpyrifos. They pursued this advocacy because chlorpyrifos exposure causes acute pesticide poisonings to workers and their communities and causes neurodevelopmental harm in children at extremely low exposure levels. Two of the Proposed Intervenors initiated this advocacy in 2007 by filing a petition to ban food uses of chlorpyrifos, followed by numerous unreasonable delay lawsuits, and finally, a successful challenge to EPA’s denial of the petition by all the Proposed Intervenors. In that lawsuit, the Ninth Circuit held that EPA must revoke all chlorpyrifos tolerances within 60 days unless it could make an affirmative finding that chlorpyrifos food uses, aggregated together, are safe, and if not, to thereafter cancel registrations “in a timely fashion.” *League of United Latin Am. Citizens v. Regan (LULAC II)*, 996 F.3d 673, 704 (9th Cir. 2021).

---

<sup>1</sup> Individual Proposed 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.

EPA could not make that safety determination and thus issued a rule revoking all food tolerances in August 2021, which became effective on February 28, 2022. Chlorpyrifos: Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) (the “Final Rule”). *See also* The Grower Petitioners’ Request for Hearing and Objections Ex. 1. Gharda—and several grower organizations (collectively “the Growers”)—first challenged the Final Rule by filing administrative objections, which EPA denied. Then, Gharda and the Growers challenged the revocation in the Eighth Circuit Court of Appeals, which has exclusive jurisdiction on the challenge under the Federal Food, Drug, and Cosmetic Act (“FFDCA”). 21 U.S.C. § 346a(h)(2). As amici in that challenge, Proposed Intervenors joined EPA in opposing Gharda and the Growers’ request for a stay, which was denied, and in defending the Final Rule revoking tolerances. That lawsuit is currently pending.

Heeding the Ninth Circuit’s order in *LULAC II*, EPA issued a Notice of Intent to Cancel (“NOIC”) the three remaining registrations for chlorpyrifos food uses, which is the subject of this proceeding. Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations, 87 Fed. Reg. 76,474 (Dec. 14, 2022). Gharda and the Growers challenge the cancellation and present arguments diametrically opposed to Proposed Intervenors’ arguments accepted by the Ninth Circuit—most particularly, that EPA can retain tolerances and registrations for food uses of chlorpyrifos only if it can find aggregate exposures to the pesticide safe, which EPA cannot do here.

For the reasons set out in this Motion, Proposed Intervenors respectfully request leave to intervene in these proceedings to defend EPA’s decision to cancel chlorpyrifos registrations. This Motion will address: first, the statutory health-based standard under which EPA regulates pesticides; second, Proposed Intervenors’ extensive history advocating for a food ban on

chlorpyrifos; and third, Proposed Intervenors interests in this matter and the potential harms to those interests resulting from this proceeding, which warrant leave to intervene.

Finally, Counsel for Proposed Intervenors has contacted counsel for the other parties and is authorized to represent that EPA has no objection to this Motion to the extent it is consistent with 40 C.F.R. § 164.31 and Gharda and the Growers have not offered their position on Proposed Intervenors' intervention. In support of this Motion, Exhibits 1 and 2 filed herewith contain Proposed Intervenors' standing declarations from *LULAC II* chlorpyrifos litigation, which document the severe harm pesticide exposure, especially from chlorpyrifos, imposes on their members and their communities.

#### I. STATUTORY BACKGROUND

EPA regulates pesticide use under two overlapping statutes: the Food Quality Protection Act of 1996 as it amended the FFDCA (hereinafter "FQPA"), and the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq.* The FQPA—unanimously passed by Congress in 1996—adopted a strictly health-based food safety standard for pesticides.

First, the FQPA prescribes a health-protective standard, allowing EPA to "establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if the Administrator determines that the tolerance is safe." 21 U.S.C. § 346a(b)(2)(A)(i) (emphasis added); *see also id.* § 346a(a)(1) (pesticide residues on food are "deemed unsafe" if there is no tolerance in effect.). A tolerance is "safe" when the Administrator has determined "there is a reasonable certainty that no harm will result from aggregate exposure" to the pesticide for the public generally and children specifically. *Id.* §§ 346a(b)(2)(A)(ii), 346a(b)(2)(C)(ii)(I)-(II).

Second, EPA must consider available information concerning "the special susceptibility of infants and children," including "neurological differences between infants and children and

adults, and effects of in utero exposure to pesticide chemicals[.]” *Id.* § 346a(b)(2)(C)(i)(II). Congress required “an additional tenfold margin of safety . . . shall be applied for infants and children to take into account potential pre- and post-natal toxicity . . .”. *Id.*; *see also id.* § 346a(b)(2)(C)-(D). EPA can use a different margin of safety “only if, on the basis of reliable data, such margin will be safe for infants and children.” *Id.* § 346a(b)(2)(C)(ii); *see also Nw. Coal. for Alts. to Pesticides v. EPA*, 544 F.3d 1043, 1046 (9th Cir. 2008).

Third, the FQPA incorporated this strengthened food safety standard into FIFRA, under which EPA can register a pesticide for use in the United States if it determines the use will not have “unreasonable adverse effects on the environment.” 7 U.S.C. § 136a(a). FIFRA long defined this standard as “any unreasonable risk to [people] or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide[.]” *Id.* § 136(bb); *see also id.* § 136a(c)(5). As amended, FIFRA’s definition of “unreasonable adverse effects” now includes “a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under [the FFDCA].” *Id.* § 136(bb).

Finally, in passing the FQPA, Congress “abrogated” EPA’s prior approach of balancing safety against economic factors and incorporated the FQPA’s health safety standard into FIFRA. *LULAC II* at 692. *See also id.* at 680.

## II. THE 2007 PETITION AND LITIGATION LEADING TO REVOCATION OF CHLORPYRIFOS TOLERANCES

In September 2007, two of the Proposed Intervenors filed a Petition to Cancel Food Uses of Chlorpyrifos (the “2007 Petition”) to protect children from learning disabilities, reduced IQ, and other neurodevelopmental harm from chlorpyrifos exposures at much lower levels than the EPA’s regulatory endpoint. *LULAC II* at 677-78. In response to the petition, EPA and its Scientific Advisory Panel (“SAP”) reviewed the extensive science, including sound

epidemiology studies, and repeatedly found that chlorpyrifos causes neurodevelopmental harm to children at low exposure levels. EPA memorialized these findings in a Revised Human Health Risk Assessment issued in 2014, which found chlorpyrifos unsafe due to drinking water contamination. *Id.* at 685-86.

In November 2015, the EPA published a proposed rule to revoke chlorpyrifos tolerances because it could not find chlorpyrifos safe. *Id.* In 2016, the EPA issued an updated Human Health Risk Assessment that derived a regulatory endpoint to protect children from learning disabilities and other neurodevelopmental harm. As the Ninth Circuit noted,

when the EPA compared the resulting safety thresholds against typical pesticide exposure scenarios, it determined that chlorpyrifos tolerances were not safe – even considering food alone, without aggregating other exposure sources, like drinking water. For example, the EPA found that expected food exposure for children 1-2 years of age was 14,000% of the threshold level of risk concern.

*LULAC II* at 688.

However, in April 2017, EPA denied the 2007 Petition, preferring to continue studying the science. Proposed Intervenors filed administrative objections, the Ninth Circuit issued another writ of mandamus ordering EPA to respond to the objections, and EPA denied the objections, preferring to wait for greater scientific certainty before revoking chlorpyrifos tolerances. *LULAC II* at 690.

Proposed Intervenors challenged EPA's denial of their objections and the Ninth Circuit reversed, holding that: (1) EPA could not deny the 2007 Petition and leave chlorpyrifos tolerances in place without finding chlorpyrifos safe and (2) EPA acted arbitrarily and capriciously because the record demonstrated chlorpyrifos tolerances are indeed unsafe. *LULAC II* at 700. The court ordered EPA to revoke the tolerances or modify them based on a safety

finding within 60 days and to cancel registrations for food use “in a timely fashion” to end EPA’s “egregious” delay in protecting people from chlorpyrifos. *Id.* at 703-04.

### III. COMPLIANCE WITH *LULAC II*

On August 30, 2021, EPA issued a Final Rule revoking all chlorpyrifos tolerances because it could not find chlorpyrifos safe. EPA acknowledged that it “could not determine that there is a reasonable certainty of no harm from aggregate exposure, including food, drinking water, and residential exposure, to chlorpyrifos, based on currently available data and taking into consideration all currently registered uses for chlorpyrifos.”<sup>2</sup> On October 19, 2021, Gharda and the Growers filed objections to the Final Rule pursuant to 21 U.S.C. § 346a(g)(2), asking EPA to stay and ultimately rescind the Final Rule, and making many of the same arguments they are presenting in this proceeding. EPA denied their objections and made the revocation effective on February 28, 2022. *See Chlorpyrifos; Final Order Denying Objections, Requests for Hearings, and Requests for a Stay of the August 2021 Tolerance Final Rule (the “Denial Order”),* 87 Fed. Reg. 11,222 (Feb. 28, 2022).

Gharda and the Growers each filed a petition seeking judicial review of the Final Rule revoking tolerances and the Denial Order denying their objections in the Eighth Circuit, which has exclusive jurisdiction over the matter. 21 U.S.C. § 346a(h)(2) (“[u]pon the filing of such a petition, the court shall have exclusive jurisdiction to affirm or set aside the order or regulation complained of in whole or in part.”). The Proposed Intervenors are participating as amici and joined EPA in opposing the stay request and in defending the Final Rule. The Eighth Circuit

---

<sup>2</sup> *Frequent Questions about the Chlorpyrifos 2021 Final Rule*, Environmental Protection Agency, <https://www.epa.gov/ingredients-used-pesticide-products/frequent-questions-about-chlorpyrifos-2021-final-rule#question-1> (last visited Mar. 28, 2023).

denied the request for a stay, heard oral argument on the merits on December 15, 2022, and has yet to issue its decision.

Following *LULAC II* and the Final Rule, EPA asked chlorpyrifos registrants to request voluntary cancellation of all chlorpyrifos food use registrations, which all registrants, except for Gharda, have done. In December 2022, EPA published its Notice of Intent to Cancel (“NOIC”) Gharda’s registrations for chlorpyrifos food uses because chlorpyrifos is unsafe, and therefore ineligible for registrations for food uses. On January 13, 2023, Gharda and the Growers each filed objections to EPA’s NOIC and requested a hearing, thereby launching the instant proceeding, pursuant to FIFRA Section 6(b). 7 U.S.C. § 136d(b).

### **LEGAL STANDARD**

40 C.F.R. § 164.31(a) provides: “[a]ny person may file a motion for leave to intervene in a hearing conducted under this subpart. A motion must set forth the grounds for the proposed intervention, the position and interest of the movant in the proceeding and the documents proposed to be filed pursuant to either § 164.22 or § 164.24.” 40 C.F.R. § 164.31(b) provides: “[a] motion for leave to intervene in a hearing must ordinarily be filed prior to the commencement of the first prehearing conference.” Lastly, 40 C.F.R. § 164.31(c) provides: “[l]eave to intervene will be freely granted but only insofar as such leave raises matters which are pertinent to and do not unreasonably broaden the issues already presented.” If leave is granted, the movant obtains full party status to the proceedings. *Id.*

### **ARGUMENT**

#### **I. PROPOSED INTERVENORS HAVE COMPELLING GROUNDS FOR INTERVENTION.**

Proposed Intervenor has compelling grounds for intervention because first, this proceeding threatens to unravel Proposed Intervenor’s longstanding and successful pursuit of a



ban on chlorpyrifos food uses and Proposed Intervenors have an interest in defending that ban. Second, Proposed Intervenors are organizations whose core missions are inextricably tied to ending chlorpyrifos food use to protect their members from acute poisonings and neurodevelopmental harm resulting from chlorpyrifos exposure. Third, Proposed Intervenors do not believe the Final Rule is at issue in this proceeding, thus intervention would not unreasonably broaden issues already presented. Alternatively, if the ALJ permits Gharda and the Growers' challenge to the Final Rule's legality in this proceeding, Proposed Intervenors will argue that EPA's use of an under protective regulatory endpoint in the Final Rule contravenes the FQPA's health-based safety standard.

A. Proposed Intervenors' longstanding advocacy led to the chlorpyrifos tolerance revocations and this cancellation proceeding.

Proposed Intervenors have advocated for the revocation of chlorpyrifos tolerances and cancellation of its food registrations at every possible opportunity. First, two Proposed Intervenors filed the 2007 Petition. Then, Proposed Intervenors filed several lawsuits in the Ninth Circuit seeking to put an end to EPA's unreasonable delay in acting on that petition. Proposed Intervenors also submitted extensive comments on EPA's preliminary, revised, and updated risk assessments for chlorpyrifos and on EPA's proposed revocation rules. After EPA denied the 2007 Petition, Proposed Intervenors successfully challenged that denial in *LULAC II*, where the Ninth Circuit held that EPA could not deny the petition and retain chlorpyrifos tolerances without finding chlorpyrifos safe. Most recently, Proposed Intervenors appeared as amici in the Eighth Circuit litigation in defense of the Final Rule.

Accordingly, Proposed Intervenors have a strong interest in defending the Final Rule and EPA's decision to cancel remaining chlorpyrifos food use registrations, which grew out of their longstanding advocacy. The potential unraveling of protections given to Proposed Intervenors'

interests protected by the Ninth Circuit’s holding in *LULAC II* warrants granting leave to intervene.

B. Proposed Intervenors’ Interests in Protecting People from Harm from Chlorpyrifos Warrant Granting Leave to Intervene.

Proposed intervenors are farmworker, health, and civil rights organizations that are dedicated to the protection of public health and the environment with missions that intersect at ending chlorpyrifos food use.

First, Farmworker Justice, United Farm Workers, United Farm Workers Foundation, Pineros y Campesinos Unidos del Noroeste, Farmworker Association of Florida, Alianza Nacional de Campesinas, and California Rural Legal Assistance Foundation are farmworker labor unions and advocacy groups that work to protect farmworkers and their families from toxic pesticides, like chlorpyrifos. Their members and the people they serve have seen first-hand the harmful effects of pesticide exposure, such as long-term health effects, like respiratory issues in workers and neurodevelopment harm to their children that is linked to learning disabilities. *See* Decl. of Erik Nicholson ¶ 8, Ex. 1 at 26; *id.* ¶ 8, Ex. 2 at 34. These Proposed Intervenors have advocated for better worker protections, but such safeguards cannot protect people, and children in particular, from chlorpyrifos because it causes neurodevelopmental harm at extremely low exposure levels.

Second, Learning Disabilities Association of America (“LDA”) works directly to help children with learning disabilities, their parents, and teachers address the challenges they face. LDA advocates to reduce environmental factors, particularly toxic chemicals, that are linked to problems with brain development and function. LDA works to decrease and prevent toxic chemical exposures—especially among pregnant women, infants, and children—through educating and advocating for changes in products, practices, and policies. It has advocated to

prevent harmful exposures to chlorpyrifos because it causes neurodevelopmental harm and learning disabilities in children.

Third, Labor Council on Latin American Advancement, LULAC, and GreenLatinos advocate for the advancement of civil and other rights for Latino communities, including migrant farmworkers and their children. Because of their commitment to occupational and environmental health and safety issues that disproportionately impact Latino and immigrant workers, these Proposed Intervenors have an interest in defending EPA's decision to cancel registrations to prevent exposure to chlorpyrifos that leads to neurodevelopmental harm.

Fourth, Natural Resources Defense Council ("NRDC") and Pesticide Action Network North America ("PANNA") filed the 2007 Petition to protect the public from substantial adverse health effects to sensitive subpopulations, such as children, from exposure to chlorpyrifos. Both organizations have longstanding organizational commitments to compelling EPA to act on the overwhelming evidence of neurodevelopmental harm from low-level exposures to chlorpyrifos. And both organizations have pushed EPA to use an appropriate and health-protective regulatory endpoint that will make the public's food and drinking water safe and secure a safer environment for those who work in, live near, and fields where food crops are grown. Decl. of Margaret Reeves ¶ 3, Ex. 1 at 83; *id.* ¶ 3, Ex. 2 at 86.

Further, Proposed Intervenors' interests in this matter are analogous to party interests for which this Tribunal allowed participation in *In re Request to Reduce Pre-harvest Interval for EBDC Fungicides on Potatoes*, EPA-HQ-OPP-2007-0181, 2007 WL3311648 (Sept. 18, 2007), a proceeding on a request to modify a cancellation order shortening the minimum time interval between the last application of the fungicide at issue on potatoes and their harvest. There, this Tribunal allowed NRDC to participate in the proceeding because the ALJ found NRDC had

sufficiently alleged its members were exposed to the fungicide at issue because of its food uses and thus “will be significantly and adversely affected” by any modification in the cancellation order. *Id.* at n.5. The ALJ further found the alleged harm to NRDC and its members was sufficient to grant participation since NRDC was a group “dedicated to protection of public health and the environment.” *Id.*

Proposed Intervenor’s interests are on par with NRDC’s in that case: the potential outcome of these proceedings would significantly and adversely affect Proposed Intervenor’s and their members’ interests because continued exposure to chlorpyrifos on food would result in harm to members, such as neurodevelopmental harm for children and indefensible health harms to farmworkers. Decl. of Martha Moriarty ¶ 3, Ex. 1 at 100-01; *id.* ¶ 3, Ex. 2 at 103; Decl. of Sindy Benavides ¶ 8, Ex. 1 at 111-12.

Proposed Intervenor sought a ban on chlorpyrifos food uses to protect their members, their children, and their communities. It took 15 years, but this goal was met when EPA revoked chlorpyrifos tolerances effective on February 28, 2022. Leave to intervene should therefore be granted so Proposed Intervenor can defend that ban’s protection.

C. Proposed Intervenor’s Positions are Pertinent and Would Not Unreasonably Broaden the Issues Already Presented.

If permitted to intervene, Proposed Intervenor would counter Gharda and the Grower’s objections. As parties, Proposed Intervenor would fully brief their positions and respond to the arguments made by other parties but would principally present the following positions.

First, contrary to Gharda’s (Obj. Br. at 5) and the Growers’ (Obj. Br.at 4) arguments that EPA failed to consider chlorpyrifos’ agricultural and economic value in its food use registration cancellation decision, those considerations are irrelevant. As the Ninth Circuit made clear, Congress prioritized the safety and protection of human health above all else when it passed the

FQPA. *LULAC II* at 692. The FQPA provides a strictly-health based food safety standard, one that explicitly eliminates any consideration or balancing of economic factors. *Id.* Congress incorporated this standard into both the FFDCA which governs tolerances and FIFRA which governs registrations. *Id.* at 680. Therefore, EPA need not consider other economic and agricultural factors.

Second, contrary to Gharda's (Obj. Br. at 6, 10-12) and the Growers' (Obj. Br. at 3) allegation that this proceeding interferes with the Eighth Circuit's jurisdiction, the FFDCA provides that tolerance revocations can only be challenged in the Courts of Appeals. 21 U.S.C. § 346a(h)(2). Both Gharda and the Growers have challenged the legality of EPA's actions to revoke chlorpyrifos tolerances in the appropriate place—the Eighth Circuit—which has *exclusive* jurisdiction on that question. *Id.* Therefore, Proposed Intervenors support EPA's contention that “a challenge to the Final Rule is outside the scope of [the] NOIC” and is thus improper to address in this forum. NOIC, 87 Fed. Reg 76, 480 (Dec. 14, 2022).

Third, both Gharda and the Growers incorrectly allege that EPA's cancellation of Gharda's chlorpyrifos registrations is unlawful because it is based on the Final Rule, which, they allege, is also contrary to law and therefore EPA lacks an evidentiary basis to cancel Gharda's registrations. These arguments are incorrect because the lawfulness of EPA's revocation of chlorpyrifos tolerances—which is legally and scientifically sound—is not properly at issue in this proceeding. The FQPA requires that EPA find chlorpyrifos safe to keep tolerances. EPA did not—and indeed cannot—do so. The FQPA safety standard prohibits retaining tolerances unless EPA can affirmatively find the pesticide safe with consideration of aggregate exposure. And since the FQPA's health safety standard is incorporated into both the FFDCA and FIFRA, where no tolerance exists, food use registrations must be canceled. The cancellation process becomes

automatic: if EPA has revoked tolerances, it must also cancel the associated food use registrations. *See* 7 U.S.C. § 136a(a); *see also LULAC II* at 694. Accordingly, the cancellation is foreordained, and this proceeding is simply the end of the administrative road for chlorpyrifos.

In the alternative, if the ALJ permits Gharda and the Growers to argue the validity of the Final Rule in this proceeding, Proposed Intervenors will present the same arguments they presented in their unaddressed objections to the Final Rule—that EPA must use neurodevelopmental harm as its regulatory endpoint to comply with the FQPA and protect the public generally and children specifically from the harms of chlorpyrifos. *See* Denial Order, 87 Fed. Reg. 11,270-1 (Feb. 28, 2022). The Ninth Circuit reviewed the factual record in *LULAC II* and determined that chlorpyrifos causes harm to children’s neurodevelopment at exposures far below EPA’s regulatory endpoint based on acute poisoning risks. As the Ninth Circuit explained, by not using a lower exposure level that would protect children from neurodevelopmental harm, the chlorpyrifos tolerances were “not safe within the meaning of the FFDCA.” *LULAC II* at 700-01. Accordingly, if the ALJ accepts Gharda and the Growers’ invitation to review the Final Rule, Proposed Intervenors would argue that EPA’s continued use of this insufficient regulatory endpoint is not health protective and contradicts the FQPA’s strictly health-based standard.

D. Leave To Intervene is Warranted Because This Motion is Timely and Procedurally Proper.

40 C.F.R. § 164.31(b) provides “a motion for leave to intervene in a hearing must ordinarily be filed prior to the commencement of the first prehearing conference.” This proceeding is still in its early stages and no prehearing conference has been scheduled yet. Therefore, this Motion is timely.

40 C.F.R. § 164.31(a) provides a motion for intervention “must set forth . . . the documents proposed to be filed pursuant to either § 164.22 or § 164.24.” That provision of 40

C.F.R. § 164.31(a) does not apply here. Proposed Intervenor support the cancellation and do not intend to file objections under 40 C.F.R. § 164.22. And the Administrator has not published a Notice of Intention to hold a hearing—rather, this proceeding was initiated by Gharda and the Growers’ hearing requests—and thus there is no Statement of Issues for Proposed Intervenor to respond to under § 164.24.

Accordingly, this Motion is timely and procedurally proper given that Proposed Intervenor have acted within the window of time and filing requirements prescribed by the Rules governing this proceeding.

### CONCLUSION

Proposed Intervenor have dedicated many years and extensive resources to secure protection from the harms of chlorpyrifos food uses, and that protection is now threatened by Gharda and the Growers’ challenge to EPA’s cancellation determination. For the reasons set forth above, Proposed Intervenor respectfully request that they be granted leave to intervene in this proceeding.

Dated: March 28, 2023.

Respectfully Submitted,



---

Patti A. Goldman  
Noorulanne Jan  
Earthjustice  
810 3rd Avenue, Suite 610  
Seattle, WA 98104  
T: (206) 343-7340  
pgoldman@earthjustice.org  
njan@earthjustice.org

*Counsel for Proposed Intervenor*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Motion to Intervene with Supporting Exhibits 1-2**, dated March 28, 2023, was sent this day in the following manner to the addressees listed below:

Original by OALJ E-Filing System to:

Mary Angeles, Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
[https://yosemite.epa.gov/OA/EAB/EAB-ALJ\\_Upload.nsf](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf)

Copy by Electronic Mail to:

*Counsel for Petitioner Gharda Chemicals International, Inc.*  
Donald C. McLean  
Kathleen R. Heilman  
Arentfox Schiff, LLP  
Email: [donald.mclean@afslaw.com](mailto:donald.mclean@afslaw.com)  
Email: [katie.heilman@afslaw.com](mailto:katie.heilman@afslaw.com)

*Counsel for Grower Petitioners*

Nash E. Long  
Javaneh S. Tarter  
Hunton Andrews Kurth LLP  
Email: [nlong@huntonak.com](mailto:nlong@huntonak.com)  
Email: [jtarter@huntonak.com](mailto:jtarter@huntonak.com)

*Counsel for EPA*

Aaron Newell  
Angela Huskey  
U.S. Environmental Protection Agency  
Office of General Counsel  
Pesticides and Toxic Substances Law Office  
Email: [newell.aaron@epa.gov](mailto:newell.aaron@epa.gov)  
Email: [huskey.angela@epa.gov](mailto:huskey.angela@epa.gov)

Dated: March 28, 2023



---

Adam Hinz  
Earthjustice  
Litigation Paralegal