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For Immediate Release
December 6, 2019

News Release 2019-87

Hawaii Attorney General Continues Fight Against Toxic Pesticides on Foods

HONOLULU – Attorney General Clare E. Connors, today joined a coalition of nine Attorneys General in filing a brief that argues that the Environmental Protection Agency (EPA) is violating federal law by continuing to allow chlorpyrifos, a widely-used pesticide with well-documented harms to infants and young children’s neurological development, to contaminate common foods. The coalition is suing EPA over its decision to continue to allow chlorpyrifos to be present in foods, even though the Agency has not made a finding – as required by federal law – that this pesticide contamination is safe.

In light of the EPA’s failure to address the safety of chlorpyrifos in food – and overwhelming scientific evidence that currently allowable levels are not safe, the coalition is urging the court to direct the EPA ban it from food.

“The EPA has failed to make the legally necessary safety findings on this dangerous pesticide,” said Attorney General Connors. “The health concerns to consumers, especially infants and young children, cannot be ignored.”

Today’s filing is part of a lawsuit led by New York Attorney General Letitia James that was filed on August 7 in the U.S. Court of Appeals for the Ninth Circuit, and includes the Attorneys General of California, Washington, Massachusetts, Maryland and Vermont. The Attorneys General of Oregon, and the District of Columbia subsequently joined the coalition’s suit.

Chlorpyrifos – a widely-used pesticide on food crops, including many fruits and vegetables commonly consumed by infants, young children, and pregnant women – is well-documented to harm proper development and functioning of the central nervous system and brain. In fact, EPA’s own scientists have twice been unable to identify a safe level of chlorpyrifos residues on food. Because of this, in November 2015 and again in November 2016, EPA issued proposed regulations to revoke all allowable levels – known as “tolerances” – for chlorpyrifos in food. Revoking these tolerances would ban the dangerous pesticide from being present in food.

However, in one of his first official acts, then-EPA Administrator Scott Pruitt disregarded those proposals – and the weight of scientific evidence amassed by the Agency – and issued an order delaying until 2022 any decision on whether to revoke or modify currently allowable tolerances for chlorpyrifos in food.

In June 2017, a coalition of Attorneys General, along with a group of petitioners, filed administrative objections to Administrator Pruitt's order. The objections argued that by leaving the current chlorpyrifos food tolerances in place, the order violated the federal Food, Drug, and Cosmetic Act (Food Act) because EPA failed to make the legally-required finding of safety required to maintain those tolerances.

In April of this year, the Ninth Circuit ordered EPA to rule on the administrative objections within 90 days. EPA issued a decision denying the objections on July 18. However, in its denial, the Agency still did not make the legally-required finding that the current tolerances for chlorpyrifos in food were safe. Instead, EPA said it would continue on its original timeline, deferring any decision on the pesticide's safety in food for another three years.

In today's filing, the coalition of Attorneys General argues that EPA's July 18 decision was arbitrary and capricious, and contrary to federal law. In particular, the coalition contends that EPA violated the Food Act by leaving the current tolerances in place without affirmatively finding that they are safe and by failing to find, to a reasonable degree of medical certainty, that the tolerances will cause no harm to infants and children. The coalition urges the court to set aside the July 18 order, and direct EPA to revoke all tolerances for chlorpyrifos residues on foods.

Chlorpyrifos is one of the most widely used pesticides in the United States on food crops, including those commonly consumed by infants and young children such as apples, strawberries, cherries, pears, peaches, nectarines, and cherries. Residues of the pesticide have repeatedly been documented in baby foods and juices. Chlorpyrifos has been subjected to regulatory review for nearly 20 years, and its dangers are well-documented. The pesticide is part of a group of chemicals that includes nerve gas and acts by inhibiting an enzyme that is key to the proper development and functioning of the central nervous system and brain. Several studies have shown that children born to women exposed to chlorpyrifos during pregnancy had a variety of disorders, including delayed motor development, attention problems, pervasive developmental disorder, attention deficit disorder, autism spectrum disorder, and reduced IQ scores.

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