



MEDIA STATEMENT

Bad News, Bayer.

Bayer-Monsanto strikes out at U.S. Supreme Court and Federal Appeals Court in bids to defeat glyphosate multi-billion-dollar cancer claims and prop-up EPA approval

(June 27, 2022—Ottawa): Last week, U.S. courts pitched two more strikes against German pesticide-maker Bayer-Monsanto’s glyphosate with implications for Health Canada’s own recent approval of the long over-rated weedkiller. Glyphosate is Canada’s and the world’s largest-selling pesticide.

On Tuesday June 21, 2022 the [U.S. Supreme Court denied Monsanto-Bayer’s petition to quash a \\$27 million damages claim](#) in favour of cancer-stricken farmer, Edwin Hardeman, that was awarded by a California court and [upheld by the 9th Circuit Appeals Court](#). As per the custom, the Supreme Court provided no reasons for its decision, however, it came a month after receiving a 30-page [brief from the U.S. Attorney General urging the Court to deny Monsanto’s petition](#).¹

Then, on Friday, a panel of four judges of the 9th Circuit Appeals Court unanimously ruled that the U.S. Environmental Protection Agency unlawfully registered (approved) glyphosate when it:

- failed to follow its own “Carcinogen Risk Assessment Guidelines” and
- dismissed concerns about its analysis raised by the EPA’s own
 - Office of Research and Development and
 - Scientific Advisory Panel,

including by systematically ignoring rodent and epidemiological human studies that revealed harm and relying on studies that found no harm. The Appeals Court did not mince words in condemning EPA’s 2020 decision:

*“A group of petitioners challenged EPA’s decision, arguing, among other things, that EPA did not adequately consider whether glyphosate causes cancer and shirked its duties under the Endangered Species Act (“ESA”). We agree and remand to the agency for further consideration [at page 10]...[W]e vacate the human-health portion of EPA’s Interim Decision and remand for further analysis and explanation...EPA’s errors in assessing human-health risk are serious. [page 34]...EPA has neither conceded error nor given any clear indication of how it will proceed on remand [at p. 51]...Thus, while we hesitate to reward what some might consider sloth or indolence, we also recognize that fully litigating the issues could result in an outcome nobody wants: more, and probably unnecessary, delay. Because of these unusual circumstances, we **GRANT** EPA’s motion to remand. We are sympathetic, however, to Petitioners’ concerns about delay and gamesmanship.” [at p. 53]²*

¹ Even so, the [U.S. Attorney General’s amicus curiae brief incorrectly reported WHO as concluding that glyphosate is only a “possible human carcinogen”](#) (at page 3). The [WHO classified glyphosate as “probably carcinogenic to humans.”](#)

² *Natural Resources Defense Council; Pesticide Action Network North America, v. U.S. Environmental Protection Agency*. United States Court of Appeals for the Ninth Circuit, No. 20-70787, EPA No. EPA-HQ-OPP-2009-0361 by Judge Friedland, writing for a unanimous court, including J. Clifford Wallace, Danny J. Boggs, and Michelle T. Friedland.

Health Canada's scientific review of glyphosate was commenced a decade after a deadline imposed by Parliament and 39 years after its only prior scientific regulatory evaluation. The publicly available summary of Health Canada's 2017 decision to approve glyphosate *until* April 27, 2032 explained that [‘Canada and the \[U.S. Environmental Protection Agency\] have been collaborating on the re-evaluation of glyphosate.’](#)

“Findings of these two U.S. appeal court decisions should give pause to Canadian MPs, and the federal the Attorney General and Minister of Health because they suggest a government regulatory process that favours pesticide manufacturers over health and environmental protection, including for Canada’s most widely used pesticide,” said Bill Jeffery, Executive Director and Legal Counsel for CHSL.

Two immediate repercussions:

1. As noted in Health Canada's [“targeted review”](#) document for a consultation closing June 30th: “If at any time, the Minister considers that the health and/or environmental risks of a pesticide may be unacceptable, then the Minister has the tools to make changes to a registration, up to and including cancellation.”
2. **“The Canadian federal Government needs to reflect on whether Health Canada and the Attorney General are respecting their Parliamentary mandates to protect human health and the environment by applying a scientific review process and litigation practice that seem to favour the interests of large chemical companies,”** Jeffery added. Parliament is already overdue in conducting a statute-mandated review of the *Pest Control Products Act* and Health Canada itself has invited comments on its [“Targeted Review”](#) of the *Act* by June 30th as part of a [program of deregulation](#). Health Canada's:
 - a) reliance on the U.S. Environmental Protection Agency's flawed scientific evaluation process,
 - b) secretiveness about the 89,000-page Canadian application dossier,
 - c) failure to consider over 14,000 studies assessing glyphosate in peer-reviewed scientific journals,
 - d) stated preference for seller-sponsored studies,
 - e) persistent refusal to consider litigation findings,
 - f) reliance on a mischaracterization glyphosate's precarious regulatory status in Europe, and
 - g) general failure to apply conflict-of-interest safeguards

exhibit a general bias in favour of pesticide manufacturers over health and environmental protection that is inconsistent with its statute-mandated responsibilities.

For further information, contact: Bill Jeffery, Centre for Health Science and Law (CHSL) in Ottawa at billjeffery@healthscienceandlaw.ca; Skype: CHSLBillJeffery, or Mobile/Whatsapp: 613-565-2140.

Background: The **Centre for Health Science and Law** is a non-profit health advocacy organization specializing in food and nutrition issues. CHSL unsuccessfully sought leave to intervene in a judicial review of Health Canada's scientific evaluation of glyphosate's impact on human health and the environment in the [Federal Court of Appeal](#) and [Supreme Court of Canada](#) in a case initiated by the Toronto-based NGO Safe Food Matters. Throughout the Canadian court proceedings, the federal government opposed putting CHSL's perspectives before the Federal Court of Appeal to inform its decision of how to appoint an independent scientific Review Panel. Last summer, the German government—where glyphosate's globe-leading manufacturer is based—[proposed regulations to phase-out glyphosate](#) by 2024. Glyphosate's current regulatory [approval in the EU was reduced from 15 to 5 years due to safety concerns](#) and will [expire in July 2023](#) unless many governments that opposed extending approval relent. In February 2022, the [Canadian Federal Court of Appeal ordered Health Canada to re-consider an objection to parts of its glyphosate reapproval decision](#), though did not spontaneously question Health Canada's decisions about transparency, evidence, or conflict-off-interest safeguards. The [section-80.1 seven-year Parliamentary review](#) may be the last line of defense. [None of 10 Canadian class actions filed against Bayer-Monsanto](#) has yet been certified.

End