



TO: Pest Management Regulatory Agency Publications Section
Pest Management Regulatory Agency (PMRA)

June 30, 2022

AND TO: Hon. Minister of Health Dr. Jean-Yves Duclos, PC, MP, FRSC
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Re: Health Canada's "targeted review" of the Pest Control Products Act is foreseeably far too narrow, especially considering the manner in which PMRA vetted glyphosate and chlorpyrifos

Dear Minister Duclos,

Please consider these comments on Health Canada's ["Targeted Review" of the Pest Control Products Act](#).

I am concerned that the limited scope of the consultation reflects a failure of the Pest Management Regulatory Agency, acting on your behalf, to address what appears to be a regulatory capture by the companies that they are mandated to regulate or, most charitably, a coincidentally strong impulse toward:

- approving pesticides by multiple techniques that are biased in favour of chemical companies and against studies published in peer-reviewed scientific journals;
- systematically forgiving regulatory violations by large companies;
- concealing from public scrutiny records held in scientific evaluation packages; and
- parsing-out information in a manner that reflects a tendency to surveil health and environmental protection advocates rather than proactively disclosing records.

A. Important relevant developments in U.S. appellate courts regarding the risk of glyphosate

Last week, at the urging of the United States Attorney General, the United States Supreme Court rejected a petition from Bayer-Monsanto to quash a multi-million-dollar court-ordered damage claim for cancer-stricken users of the pesticide glyphosate.¹ 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](#).² This will enable many thousands of similar civil claims to proceed alleging tens, possibly hundreds of billions of dollars in financial claims to advance in US courts. Since 2018, ten class action lawsuits against Bayer-Monsanto concerning glyphosate have been filed in Canadian courts.

Also last week, a U.S. Circuit Appeals Court declared unlawful the U.S. Environmental Protection Agency's re-approval of glyphosate due to "serious errors" in its scientific assessment of the pesticide's harm to human health and the environment, a review that it conducted in collaboration with Health Canada.³ In 2017, Health Canada approved glyphosate for use in Canada until 2032.

B. Important developments in the regulation of glyphosate in the European Union

The Canadian *Pest Control Products Act* attaches special importance to pesticide pans implemented in OECD countries, nearly two-thirds of which are European countries.

Shortly after the Health Canada approved glyphosate, the European Union reduced its re-approval for glyphosate from the normal 15 years to five years scheduled to expire in December 2022. At least eight of 28 members of the European Commission's Health and Food Commissioner Directorate-General's Appeal Committee favoured a renewal period of even less than five years or an immediate ban. Six governments of the EU voted for an immediate ban. The E.U. (which includes 23 OECD countries) conducts Union-wide safety evaluations, not individual national ones, though national bans are possible. The large size of the glyphosate application record prompted the EU to assign the review task to several countries, not the usual one. And the European Parliament voted overwhelmingly in favour of a ban in a non-binding resolution in a vote of 355 votes to 204, in favour of the ban with 111 abstentions.⁴

Though the European Union reduced the [regulatory approval of Glyphosate from 15 years to five years and, though its status is set to expire by December 15, 2022, it has been extended until July 31, 2023 due to delays in the evaluation process by the European Food Safety Authority.](#)

Also last week, the European Commission published a draft mandatory regulation to reduce the amount of pesticides used on the continent by 50% by 2030.⁵ This is consistent with the precautionary approach advocated by the World Health Organization in its" *International code of conduct on pesticide management: guidelines on highly hazardous pesticides.*⁶

C. The unduly limited scope of the "targeted review" while full Parliamentary review is pending

I understand the "targeted review" process to be driven by the policy of "Targeted Regulatory Reviews"⁷ recommended by the 2016-2017 Advisory Council on Economic Growth, and announced in Budget 2018, and as specially detailed in the "Regulatory Roadmap" for agriculture,⁸ ***not*** the full statutory review mandated by Parliament.

The *Pest Control Products Act* is Parliament's instructions to Health Canada on how to protect human health and the environment; the government should tread carefully with directives premised on the belief that regulations are nuisances to companies or unnecessary impediments to economic progress. Section 80.1 of the *Pest Control Products Act* stipulates:

Permanent review of Act

80.1 (1) *The administration of this Act shall, every 7 years after the day on which section 1 comes into force, stand referred to such committee of the House of Commons,*

of the Senate or of both Houses of Parliament as may be designated or established for that purpose.

Review and report

(2) *The committee designated or established for the purposes of subsection (1) shall, as soon as practicable, undertake a comprehensive review of the provisions and operation of this Act and shall, within one year after the review is undertaken or within such further time as the House of Commons, the Senate or both Houses of Parliament, as the case may be, may authorize, submit a report thereon, including a statement of any changes to this Act or its administration that the committee would recommend.*

According to the official consolidation of the *Act*, *Statutory Instrument SI/2006-93* ordered the *Act* into force on June 28, 2006.⁹ As such, the second review was due to be referred to the Parliamentary Committee by June 28, 2020, approximately two years ago. The first section 80.1 review of the *Act* was commenced by the House of Commons Standing Committee on Health on December 9, 2014—also already more than seven years ago—and tabled in the House of Commons on April 28, 2015, also already more than seven years ago.¹⁰

The stated priorities of the present targeted Review were (1) techniques to improve continuous oversight, (2) exploring adopting “modern business processes” and changing the method for adopting “Maximum Residue Levels,” (3) improving transparency within the limits of “international commitments” and “preserving confidential business information”; and (4) “less regulatory burden.”

Similarly, when federal *Bill S-6, An Act respecting regulatory modernization*,¹¹ was tabled in the Senate on March 31, 2022, it contained 20 pages of proposed amendments to the *Pest Control Products Act*, however, those amendments were withdrawn, apparently without explanation in the Senate debates or committee hearings. They do not appear in the third reading version of the Bill that was passed by the Senate on June 20, 2022 before the summer recess.¹² While the bill did include some valuable public interest reforms (like an express power for the Minister to issue a mandatory recall of a pesticide), it mainly included housekeeping measures, and a measure to convert an automatic de-registration for non-compliance to a discretionary one only if there is a risk to health or the environment.

The words “regulatory modernization” in the name of the bill suggest a focus on industry interests, not health and the environment. By all accounts, health and environmental groups were completely unaware that Bill S-6 was in the works suggesting an *ex parte* working relationship with chemical company stakeholders and Health Canada and government leaders in the Senate. This is yet another example of a major pesticide-related decision being made without notice through Health Canada’s Consultation and Stakeholder Information Management System. Even the CSIMS notices for the current consultation were repeated in triplicate but not updated to reflect the June 30, 2022 deadline. That is, during the final two months of the consultation CSIMS describes it as a closed consultation.

Consultations

18. [E-consultation - Targeted review - Pest Control Products Act \(Pesticides Safety\)](#)

2022-03-21 to 2022-05-20

Health Canada's Pest Management Regulatory Agency (PMRA) has published a Discussion Document, Further Strengthening Protection of Health and the Environment: Targeted Review of the Pest Control Products Act (PCPA), for a 60-day comment period. This action is a result of the announcement made by the Government of Canada on August 4, 2021, which included a commitment to consult on specific provisions of the Pest Control Products Act, to consider, among other elements, ways to balance how pesticide review processes are initiated in Canada and increase transparency. In this context, transforming the pesticide program is a key priority for the PMRA and the targeted review of the PCPA is a mandate commitment for the Minister of Health. Through this consultation, the PMRA is seeking input from Canadians, stakeholders and partners on whether legislative changes are required to achieve the objectives of the transformation.

19. [E-consultation - Consultation on Further strengthening protection of health and the environment: Targeted review of the Pest Control Products Act, Discussion Document DIS2022-01 \(Consumer Product Safety\)](#)

2022-03-21 to 2022-05-20

The Pest Management Regulatory Agency (PMRA) invites stakeholders and the public to submit written comments on Discussion Document DIS2022-01, Further Strengthening Protection of Health and the Environment: Targeted Review of the Pest Control Products Act.

20. [E-consultation - Consultation on Further strengthening protection of health and the environment: Targeted review of the Pest Control Products Act, Discussion Document DIS2022-01 \(Consumer Product Safety\)](#)

2022-03-21 to 2022-05-20

The Pest Management Regulatory Agency (PMRA) invites stakeholders and the public to submit written comments on Discussion Document DIS2022-01, Further Strengthening Protection of Health and the Environment: Targeted Review of the Pest Control Products Act.

D. Transparency as an indicative governance challenge

CHSL's Priorities for transformational change at Health Canada's Pest Management Regulatory Agency, the federal government's delegate for exercising the Minister's powers under the *Pest Control Products Act*.

I am not aware of the recent changes described in the 23-page consultation document about making application materials available at the decision-making stage; I am only aware of egregious delays experienced by environmental and health protection advocates obtaining information even in 2022. My own experience with efforts to obtain the reputed 89,000-page application package is that none was offered to be available without me first signing two non-disclosure agreements enforceable by criminal sanctions and that either the entire 89,000 pages were considered confidential or that the public and confidential documents were co-mingled and, as such, all treated as confidential.

At a recent PMRA information session, an official stated that a legal barrier to the disclosure of environmental and health protection studies is an (unspecified) duty (presumably in the *Official Languages Act*) to translate to the second official language of all documents. This seems to be either incorrect or debatably contrary to *Access to Information Act* and duties of transparency under the *Pest Control Products Act* and regulations.¹³

This strong impulse toward secrecy seems similar to Health Canada's approach to concealing clinical trials of pharmaceutical drugs. In 2019, the Federal Court in *Doshi v. Canada (Attorney General)*, which considered Health Canada's application of Vanessa's law, ruled:

[11] Yet, publicly disclosing clinical trial results may be beneficial to public health. There are concerns that the conduct of those tests may be biased, or that pharmaceutical companies selectively publish results that favour their interests. Increased public scrutiny of the work of regulatory agencies, such as Health Canada, may uncover regulatory failures. In this regard, Dr. Doshi states in his affidavit:

... analyses of regulatory data, such as clinical study reports, can overturn conclusions previously thought to be reliable, altering the risk-benefit assessment that is central to the authorization and use of medicines.

[60]...it is useful to recall that Health Canada's traditional position was that all information submitted by pharmaceutical companies, including clinical trial reports, is "confidential business information" that cannot be disclosed...[75]...Health Canada's decision in this case is unreasonable, because it entirely disregards one of the main purposes of Vanessa's Law, namely, to improve clinical trial transparency, it amounts to a fettering of discretion and it does not result in a proportionate balance between Dr. Doshi's freedom of expression and Health Canada's purposes... [80] It thus becomes clear that Health Canada's blanket confidentiality policy is unreasonable. It ran against one of the purposes of Vanessa's Law... [90] Nor do I need to decide whether it was reasonable for Health Canada to refuse to disclose documents to Dr. Doshi for the purposes of his "methodology project". As I have decided that Health Canada cannot impose a confidentiality requirement, it follows that Dr. Doshi will be able to use the documents disclosed on the basis of his "systematic review project" for the purposes of his "methodology project".¹⁴

Implementing an approach like Vanessa's law seems important, especially in light of recent experiences with glyphosate and chlorpyrifos in which Canada appeared to be following U.S. EPA approaches under the Trump Administration which were later sharply discredited by U.S. appellate courts. It would, of course, be essential to ensure that transparency efforts are proactive, not continuously contingent on expensive and time-consuming litigation.

E. A public-interest-oriented review of the *Pest Control Products Act* would consider recommendations of statutory reforms and other remedies to:

1. **Mandate systematic reviews of published peer-reviewed science.** Mandate systematic reviews of peer-reviewed literature on relevant pesticides. Applicants should stipulate search terms. Government should follow a transparent process to assess the comprehensiveness of these reviews including metrics for assessing the quality of studies and key conclusions.
2. **Be transparent about public consultations.** Mandate notification of all pesticide consultations through [the Consultation and Stakeholder Information Management System](#) (with a minimum notice period for meetings and consultation periods of durations that are proportionate to the complexity of the file) to avoid the appearance that notices are designed to discourage participation by public health, environmental, or other public interest groups.

3. **Publicly state conflict-of-interest safeguards (if any) and solicit public input on improvements to ensure the integrity of the decision-making process.** Mandate a public consultation and review of Health Canada's conflict-of-interest safeguard policy (if any) for reviewing products on the basis of mainly seller sponsored studies. Without robust conflict of interest safeguards governing the numerous Health Canada meetings with regulated parties and its heavy reliance “seller sponsored” studies to make regulatory decisions, Health Canada is vulnerable (and seen to be vulnerable) to bias and regulatory capture. For example, Health Canada’s response to consultation submissions by health and environmental groups in its 108-page 2017 PMRA glyphosate Re-evaluation Decision¹⁵ was not a thoughtful consideration of the consultation input, but a categorical rejection of all of the public input appearing like repelling a siege. The eight-page decision (at pages 2-9) was followed by a 50-page point-by-point dismissal of 49 sets of criticisms of the 2015 proposed decision and 45 pages of new references and appendices.

Of the 460 pesticides listed in the Pest Action Network UK database,¹⁶ Canada has only banned 29 pesticides that are banned in at least one other country. Health Canada’s “Pest Control Products Sales Report for 2018”¹⁷ listed 597 pesticides that are available for sale in Canada, indicating that it approves more than 95% of pesticides for which registrations are sought in Canada (a very small number of which, like child brain-wasting pesticide Chlorpyrifos, are subsequently banned after some time of use. pesticides and Canada approves about 95%. Of the 460 pesticides in the PAN list, the EU either banned or had not approved 383 pesticides; i.e., it had only approved 17% of those pesticides, suggesting a more protective approach to health and environmental protection in Europe than Canada.

4. **Mandate the publication of an OECD/EU regulatory status tracker updated monthly.** Publish Health Canada's interpretation of the changes in the regulatory status of glyphosate and any other pesticide in the European Union and OECD countries since 2015. Health Canada could publish the Pesticide Action Network list of banned pesticides and correct any errors or omissions in the Canadian entries.¹⁸ According to the PAN list, three pesticides are approved for use in Canada but banned in more than 50 countries: pentachlorophenol (PCP) and salts, ethylene oxide, and phorate.
5. **Reconcile Health Canada's access to information policy and justify limits.** Articulate Health Canada's position on public access to pesticide application materials and whether, as it says, non-disclosure agreements enforced by [criminal sanctions and disclosed only following lengthy delays are justified for records that have already been stripped of "confidential business information"](#) and recent revelations that this policy might be driven by the *Official Languages Act*.
6. **Justify timelines for "reviews."** Justify how "30-day reviews" (as originally proposed in *Bill S-6* and presumably may resurface) make any sense for massive ingredient-evaluation dossiers (ranging from 30,000-89,000 pages) that might only be available in PDF format (making recalculation of industry data time-consuming), and involved thousands of peer-reviewed studies. For instance, coincidentally, approximately 14,000 published studies have been indexed for each of glyphosate, chlorpyrifos, and pentachlorophenol. See, for instance, <https://www.sciencedirect.com/search?q=pentachlorophenol> Health Canada officials have

said that PMRA recently switched to a risk-based review procedure, but were not specific about how risk is assessed; it is implausible to say that everything is considered. Public consultations on re-evaluations are 60 days and Notices of Objections are subject to 60-day limits, but Health Canada often takes years to conduct re-evaluations, and are due to be repeated on the basis of 15 years of accumulated studies, and are sometimes years overdue without consequence to the regulator.

An Internet-published schedule of re-evaluations would aid view and could reveal the risk-based due diligence. Long delays in sharing access to application dossiers are also incompatible with short public comment periods. Likewise, non-disclosure agreements appear incompatible with reviewing applications to more effectively participate in consultations or reviews published in scientific journals. The decade-long delay past the Statute imposed deadline for beginning the re-evaluation of glyphosate (and 39 years after its only prior scientific evaluation), seems to be a capitulation to the maker of Canada's widely used pesticide, especially at a time when the World Health Organization was raising concerns that is carcinogenic. A public health organization would expedite such a review, not put it on the back burner.

7. **Implement mechanisms for continuously tracking published scientific evidence of risk.** Pesticide manufacturers are plainly not adequately notifying Health Canada of risks as they are legally required to do. For instance, registrants notified Health Canada of a total of 8 published studies on chlorpyrifos between 2006 and 2022 when it was finally banned partly because they failed to provide evidence of human safety concerns during which period the vast majority of 13,878 studies were published in peer-reviewed scientific journals. See: <https://pest-control.canada.ca/pesticide-registry/en/index.html> Whether companies only funded studies that showed no harm, only allowed studies finding no harm to be published, or failed to report studies revealing harm to Health Canada, there is a failure to notify the regulator of risk. This requires a knowledge-management strategy and operational plan that may include simple measures like setting up pesticide-related publication alerts from indexes of peer-reviewed research, such as <https://pubmed.ncbi.nlm.nih.gov/> and www.ScienceDirect.com and establishing internal protocols to red-flag concerns for analysis as part of a continuous regulatory oversight. Likewise, the regulation-mandated reporting of adverse incidents published in scientific studies¹⁹ yielded only 13 reports on glyphosate while more than 13,000 studies mentioning glyphosate were published.
8. **Oblige the minister/PMRA to keep apprised of Canadian and foreign litigation related to the public health, the environment, and the effectiveness of pesticides and to report implications for regulatory status.** Contrary to Health Canada's stated position on glyphosate, for instance, courts of law make conclusions about scientific facts that are meaningful and, arguably, more indicative of the truth than government agencies that over-rely on "seller sponsored" studies and largely ignore studies published in peer-reviewed scientific journals. In its re-evaluation of glyphosate, the PMRA expressly ignored U.S. litigation.²⁰
9. **Define key concepts in legislation.** Include working definitions of key terms in the *Pest Control Products Act* itself such as "scientifically founded doubt," "scientifically based

approach," "precautionary principle," and "health risks." Such definitions might clarify that, for instance, that a "scientifically based approach" would not ignore 96% of studies published in scientific journals or rely mainly on "seller sponsored studies."

10. **Clarify that statute-mandated estimates of exposure to pesticides in food require using Canadian food consumption data.** At some level, Parliament might convey through a report or additional language in the *Pest Control Products Act* that measuring exposure to pesticides in Canada requires recent Canadian food consumption data (not decades-old US food consumption data).
11. **Report pesticide sales data in the normal sense of the word.** Sales data for all approved pesticides should be proactively published by Health Canada on its website with sales per pesticide expressed in total aggregate sales, not released only on request and not expressed as wide ranges (e.g., <50,000 kg, >50,000 kg, >100,000 kg, >500,000 kg, and >1,000,000 kg per year).
12. **Reconcile PMRA's approach to product labelling with risk-reduction.** Reconcile the fact that [2015-2019 enforcement statistics indicate that 72% \(47 of 65\) monetary penalties for breaches of the pest control act and regulations](#) were for failure to follow label instructions conveyed in "labels" that often range from 100-200 pages long. Also, 99% of enforcement actions were addressed by warning letters, possibly signifying that failure to follow labels is a widespread problem and possibly reflecting failures in the label design themselves.

I have attached this week's media comment about the U.S. litigation concerning glyphosate.

I urge you to take a broader approach to the department's review to be adequately prepared for the full Parliamentary review and, in particular, to emphasize the importance of health and the environment.

Respectfully submitted,



Bill Jeffery, BA, LLB, Executive Director and General Counsel
Centre for Health Science and Law

Endnotes

¹ *Monsanto Company v. Edwin Hardeman*. Supreme Court of the United States. Court File: No. 21-241. May 10, 2022. Brief for the United States as amicus curiae. Petition denied June 21, 2022. See: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21-241.html>

² *Monsanto Company v. Edwin Hardeman*. Supreme Court of the United States. Court File: No. 21-241. May 10, 2022. Brief for the United States as amicus curiae. Available at: https://www.supremecourt.gov/DocketPDF/21/21-241/222984/20220510154200610_Monsanto.CVSG%205.9.22%20v.2.pdf 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.” See: World Health Organization International Agency for Research on Cancer. IARC Monographs Volume 112: evaluation of five organophosphate insecticides and herbicides. Summary. March 20, 2015. Lyon, France. Available at: <https://www.iarc.who.int/wp-content/uploads/2018/07/MonographVolume112-1.pdf>

³ *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. The Court did not mince words:

*“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]*

⁴ News European Parliament. MEPs demand glyphosate phase-out, with full ban by end 2022. Press Releases October 24, 2017. Available at: <https://www.europarl.europa.eu/news/en/press-room/20171020IPR86572/meps-demand-glyphosate-phase-out-with-full-ban-by-end-2022> And the resolution to extend its approval for five more years was opposed by 9 EU members (six of which are also OECD members), even though it was an approval for far less than the 10 years the industry requested, according to the EU Observer: <https://euobserver.com/green-economy/140042> OECD members: Austria, Belgium, France, Greece, Italy, and Luxembourg • Non-OECD members: Croatia, Cyprus, and Malta.

⁵ Samuel Petrequin. The Associated Press. “EU Commission proposes cutting pesticides by half by 2030.” CTV Television. Wednesday, June 22, 2022. Available at: <https://www.ctvnews.ca/mobile/climate-and-environment/eu-commission-proposes-cutting-pesticides-by-half-by-2030-1.5958218?cache=nnyvmxsajsiow>

⁶ World Health Organization. Geneva. 2016. Available at: <https://apps.who.int/iris/handle/10665/205561>

⁷ Treasury Board of Canada Secretariat. Targeted Regulatory Reviews. Last modified January 25, 2021. Available at: <https://www.canada.ca/en/government/system/laws/developing-improving-federal-regulations/modernizing-regulations/targeted-regulatory-reviews.html>

⁸ Canadian Food Inspection Agency. “Agri-food and aquaculture: Targeted regulatory review - Regulatory roadmap.” Published: June 2019, Last update: February 2021 Available at: <https://inspection.canada.ca/about-cfia/acts-and-regulations/forward-regulatory-plan/regulatory-roadmap/eng/1612197905956/1612197906166>

⁹ *Pest Control Products Act* (S.C. 2002, c. 28). Available at: <https://laws-lois.justice.gc.ca/eng/acts/P-9.01/page-9.html#h-419147>

¹⁰ The Statutory Review of the Pest Control Products Act, 2015 Report of the Standing Committee on Health Ben Lobb Chair APRIL 2015 41st PARLIAMENT, SECOND SESSION. Available at: <https://www.ourcommons.ca/Content/Committee/412/HESA/Reports/RP7937703/hesarp10/hesarp10-e.pdf>

¹¹ *Bill S-6, An Act respecting regulatory modernization*. 44th Parliament, 1st session. Available at: <https://www.parl.ca/DocumentViewer/en/44-1/bill/S-6/first-reading>

¹² *Bill S-6, An Act respecting regulatory modernization*. 44th Parliament, 1st session. Available at: <https://www.parl.ca/DocumentViewer/en/44-1/bill/S-6/third-reading>

¹³ The *Pest Control Products Act* states that:

Evaluation reports

(3) *An evaluation report referred to in paragraph (2)(f) shall contain a summary of the information considered and shall contain any confidential test data and confidential business information that the Minister considers appropriate.*

(4) *The Minister shall allow the public to have access to, and copies of, any information in the Register that (a) is not confidential test data or confidential business information; or (b) is confidential test data that has been made subject to public disclosure in accordance with the regulations made under paragraph 67(1)(m).*

¹⁴ *Doshi v. Canada (Attorney General)*, 2018 FC 710 (CanLII), [2019] 1 FCR 157, <<https://canlii.ca/t/ht1mz>>.

¹⁵ As is the practice of PMRA, the final decision on glyphosate is not published, but available on request from PMRA at: <https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/pesticides-pest-management/decisions-updates/registration-decision/2017/glyphosate-rvd-2017-01.html>

¹⁶ Available at: <https://www.pan-uk.org/site/wp-content/uploads/PAN-Consolidated-List-of-Bans.xlsx>

¹⁷ See the list at pages 18-33 at https://publications.gc.ca/collections/collection_2020/sc-hc/h111-3/H111-3-2018-eng.pdf

¹⁸ Available at: <https://www.pan-uk.org/site/wp-content/uploads/PAN-Consolidated-List-of-Bans.xlsx>

¹⁹ Mandated by the *Pest Product Control Act* and *Pest Control Products Incident Reporting Regulations*, SOR/2006-260. Available at <https://pest-control.canada.ca/pesticide-registry/en/incident-report-search.html>

²⁰ The PMRA's Scientific Management Committee rejected the relevance of US class action outright without explanation on November 18, 2018: "The Glyphosate Reevaluation Decision Document (RVD2017- 01) published by Health Canada April 28, 2017, is unrelated to legal events occurring in the US."



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.

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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