

## Just How Harmful is Chlorpyrifos?

On August 9<sup>th</sup>, 2018, the Ninth Circuit Court of Appeals directed the U.S. Environmental Protection Agency (“EPA”) to “revoke all tolerances and cancel all registrations for chlorpyrifos within 60 days.”<sup>1</sup> The reasoning behind this holding is summarized below.

- “Chlorpyrifos, an organophosphate pesticide **initially developed as a nerve gas during World War II**, was approved in 1965 in the United States as a pesticide for agricultural, residential, and commercial purposes.” *Id.* at 819.
- **The EPA has known about the pesticides negative effects** on childhood development since at least 1998. At that time the EPA cancelled all residential uses of the pesticide, because of the “**acute dietary risks**” for “**infants, all children, and nursing females.**” *Id.*
- Then in 2008, the EPA wrote a paper on the pesticide, which concluded that **chlorpyrifos “likely played a role in low birth rate and delays in infant mental development,”** as was observed in studies. *Id.*
- A Science Advisory Panel concluded in 2011 that there was **persuasive evidence that** the pesticide had enduring effects on the Central Nervous System. **Exposure to the pesticide has been associated with “adverse neurodevelopmental effects in children, including abnormal reflexes, pervasive development disorder, and attention and behavior problems.”** *Id.*
- This case involved a petition to the EPA to ban the pesticide chlorpyrifos from 2007. The Court found the EPA’s “delay in responding to the 2007 Petition ‘egregious,’ especially ‘[i]n view of [the] EPA’s own assessment of the dangers to human health posed by this pesticide,’ noting that the EPA had recently ‘reported that chlorpyrifos poses such a significant threat to water supplies that a nationwide ban on the pesticide may be justified.’” *Id.* at 820.
- Federal Law requires the EPA to ban pesticides from use on food products unless, “There is a reasonable certainty that no harm will result from aggregate exposure to the pesticide.”<sup>2</sup> The court found that **for nearly two decades, the EPA has documented the adverse effects of chlorpyrifos** on the physical and mental development of American infants, **yet over the past decade, the agency has stalled on responding to petitions to ban the pesticide.** *Id.* The EPA’s only defense to this lawsuit, was that the court has no jurisdiction to hear the case. They did not deny the merits of the claim. *Id.* Accordingly, the court granted the petition for review, and remanded the case back to EPA with directions to cancel all registration for chlorpyrifos.

The Court said, “If Congress’s statutory mandates are to mean anything, the time has come to put a stop to this patent evasion.” *Id.* **If the health of our children in Oregon is to mean anything, the time has come to place a statewide ban on chlorpyrifos.**

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<sup>1</sup> *League of United Latin American Citizens v. Wheeler*, 899 F.3d 814 (9<sup>th</sup> Cir. 2018).

<sup>2</sup> *Id.* at 817. Quoting 21 U.S.C. § 346a(b)(2)(A)(ii).