



## Endangered Species Act Violated with EPA Bee-Toxic Pesticide Registrations

In early May, U.S. District Judge Maxine Chesney ruled that the U.S. Environmental Protection Agency (EPA) violated the Endangered Species Act (ESA) when it issued 59 neonicotinoid insecticide registrations between 2007 and 2012 for pesticide products containing clothianidin and thiamethoxam. The original lawsuit against EPA, *Ellis v. Housenger*, was filed in March 2013, by beekeeper Steve Ellis and a coalition of other beekeepers and environmental groups, including Beyond Pesticides. The 2013 lawsuit focused on EPA's failure to protect pollinators from dangerous pesticides and challenged EPA's oversight of the bee-killing pesticides, clothianidin and thiamethoxam, as well as the agency's practice of "conditional registration" and labeling deficiencies.

Judge Chesney rejected claims by pesticide producers and their supporters that

the plaintiffs failed to establish a causal link between the pesticides and the plaintiffs' injury. The judge did not order EPA to consult with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), which is required when registering a pesticide in order to mitigate risks to endangered species. Instead, she directed the parties, including the plaintiffs, defendant EPA, and intervenor Bayer CropScience, to move forward with a settlement conference to resolve the disputes. Thus, additional proceedings will follow the decision to assess the proper solution for EPA's violations, which may lead to cancellations of the 59 pesticide registrations, including agricultural products such as seed-coating insecticides.

This ruling comes at a time when neonicotinoids are pervasive and

widely used across the agricultural landscape, home gardens, and public spaces. Of the two most widely planted crops in the U.S., between 79 to 100 percent of corn seed and 34 to 44 percent of soybean seed were coated with neonics in 2011. A conservative estimate of the area planted with neonic coated corn, soybean, and cotton seed totals just over 100 million acres, or 57 percent of the entire area for these crops.

## EPA Sued for Delaying Updated Pesticide Applicator Standards



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On June 14, farmworker and health organizations sued the U.S. Environmental Protection Agency (EPA) following the agency's announcement in May that it will delay for one year the implementation of a final rule that revised and updated protections for certified pesticide applicators. The Certification of Pesticide Applicators (CPA) rule includes much needed requirements like mandatory age minimums, as well as better training for pesticide applicators to protect workers and the public from poisoning by toxic pesticides.

The CPA rule was revised and made final on January 4, 2017, and was scheduled to go into effect March 6, 2017. It outlines regulations regarding the certification of applicators of restricted use pesticides (RUPs)—some of the most hazardous pesticides. The rule ensures that applicators of RUPs get adequate training and establishes a minimum age of 18 for pesticide

applicators. It also requires that applicators be able to read and write; increases the frequency of applicator safety training to every year; and improves the quality of information that workers receive about the pesticides that they apply. EPA has issued an extension "until May 22, 2018, and . . . the agency is taking this action to give recently arrived Agency officials the opportunity to conduct a substantive review of the revised Certification of Pesticide Applicators rule."

The delay means minors or poorly trained applicators can continue to handle some of the most toxic pesticides in agricultural, commercial, and residential settings, putting themselves and the public at risk. According to EPA, there are about one million certified applicators nationwide. Before delaying implementation, the agency said the revised rule could prevent some 1,000 acute poisonings every year.

## Court Revokes Federal Approval of Nanotech Pesticide

In early June, the U.S. Court of Appeals for the Ninth Circuit concluded that the U.S. Environmental Protection Agency (EPA) failed to show that its conditional registration of the antimicrobial, nanosilver pesticide product “NSPW-L30SS” (previously “Nanosilva”) is in the public interest and revoked its registration. The case, brought by the Natural Resources Defense Council and the Center for Food Safety, challenged the approval of the novel nanotechnology, which was marketed for use in more than 400 products, including textiles and plastics. The decision underscores the need for EPA to ensure pesticide products, including nanomaterials, at least meet the standards of federal pesticide law.

The court decision further warns, “Nanosilver, due to its much smaller particle size, can have significantly different properties than conventional silver. These different properties provide new benefits and opportunities to industry. But with these new benefits come new risks.” Studies find that nanoproducts carry with them significant risks to people and the environment, including DNA damage to plants, increasing bacterial resistance to antimicrobials, and toxic and potentially lethal impacts on fish.

This case also highlights the deficiencies of the controversial conditional registration process at EPA. EPA’s conditional approval of the nanoproduct exemplifies the agency’s allowance of products into the market without sufficient and legally required data. A 2013 U.S. Government Accountability Office report concludes that, “EPA does not have a reliable system to track key information related to conditional registrations, including whether companies have submitted additional data within required timeframes.” This latest court decision shows that products must be fully evaluated before being allowed on the market, and that continued conditional registration of products is contrary to EPA’s mission.

The litigation follows a 2008 petition filed by 13 organizations, including Beyond Pesticides, a lawsuit in 2014, and an EPA agreement in 2015 to evaluate nanotech pesticides.



EPA Administrator  
Scott Pruitt

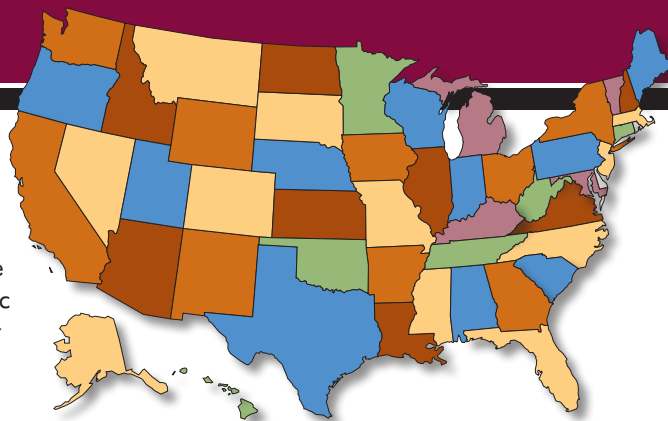
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## Groups, AGs Challenge EPA Decision to Allow Insecticide Chlorpyrifos in Agriculture

Numerous farmworker organizations in June filed an administrative appeal to the U.S. Environmental Protection Agency (EPA), seeking to reverse Administrator Scott Pruitt’s order to continue allowing the toxic organophosphate insecticide chlorpyrifos in agriculture, and revoke all tolerances (allowed food residues) of the chemical. On the same day, Attorneys General (AGs) from seven states announced legal objections to the order, also calling for a reversal of the decision and a revocation of all tolerances. Allowing the continued use of chlorpyrifos runs counter to findings of independent science and EPA’s own scientists, which establish unacceptable risks to humans and the environment.

The administrative appeal, filed by Earthjustice on behalf of 12 environmental, labor, and civil rights organizations, resulted from the decision by EPA to allow the use of chlorpyrifos while it studies the safety of the chemical. The seven AGs, in their filing, are charging that EPA wrongfully approved the continued use of chlorpyrifos in agriculture without first gathering and assessing the full safety data, as required by the *Federal Food, Drug, and Cosmetic Act*. Chlorpyrifos is part of the organophosphate class of pesticides, which were used in World War II as nerve agents. As potent neurotoxicants, organophosphates are extremely harmful to the nervous system and the developing brains of children.

In March 2017, Mr. Pruitt reversed a tentative EPA decision from 2015 to revoke food residue tolerances of chlorpyrifos due to the chemical’s neurotoxic impacts. This would have effectively banned chlorpyrifos from agriculture. This decision stemmed from a petition and lawsuit filed by the Natural Resources Defense Council (NRDC) and Pesticide Action Network North America (PANNA) ten years ago, calling for EPA to revoke all chlorpyrifos tolerances and cancel all registrations. A federal appeals court mandated that EPA take final action by March 31, 2017.



## Montgomery County, MD Pesticide Restrictions Supported in Face of Industry's Legal Challenge

**W**ith a chemical and lawn care industry lawsuit challenging the right of Montgomery County, Maryland to restrict pesticides on private property throughout the community, nine organizations, including Beyond Pesticides, filed an Amicus brief in support of a 2015 landmark Montgomery County, Maryland ordinance. Intended to protect children, pets, wildlife, and the wider environment from the hazards of lawn and landscape pesticide use, the law is facing a legal challenge filed in November last year by the pesticide industry group Responsible Industry for a Sound Environment (RISE).

The plaintiffs, which include local chemical lawn care companies and a few individuals, allege that the local ordinance is preempted by state law, despite the fact that Maryland is one of seven states that has not explicitly taken away (or preempted) local authority to restrict pesticides more stringently than the state.

The law at issue, 52-14 (*the Healthy Lawns Act*), which restricts the cosmetic lawn care use of toxic pesticides on public and private land, protects over one million people, the largest number to be covered by any local jurisdiction to date.

Passing the Montgomery County Council by a vote of 6-3, the bill allows time for transition, training, and a public education program over several years. In limiting the pesticides allowed to be used for turf management, the law defines acceptable materials as those permitted for use in organic production, or identified by the U.S. Environmental Protection Agency (EPA) as "minimum risk pesticides" under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Section 25(b).

"It is not just a longstanding right, but a responsibility, of counties in the state to exercise their powers to the fullest to protect the health and well-being of their citizens. This lawsuit unfortunately seeks to strip Montgomery, and other counties in the state, of their critical role in the protection of public health," said Chris Nidel, partner at Nidel & Nace, PLLC, which represents the amici.

## Walmart and True Value Pledge to Phase Out Bee-Toxic Pesticide

**W**almart and True Value announced in May that they will be phasing out neonicotinoid (neonic) pesticides from their retail supply chains. These announcements follow numerous scientific studies that have consistently implicated neonics in the decline of honey bees and wild pollinators. The decision stems from an ongoing consumer and environmental campaign urging retailers to stop selling plants treated with neonics and to remove products containing them from store shelves.

Neonicotinoids are systemic pesticides, or whole plant poisons, taken up by a plant's vascular system and expressed in the pollen, nectar, and guttation droplets. They are also highly persistent, with research showing the potential for certain chemicals in the class, such as clothianidin, to have a half-life of up to 15 years. Studies show significant cause for concern when it comes to pollinators and exposure to these pesticides.

In April 2015, Lowe's announced a commitment to phase out products containing neonics within 48 months. Home Depot followed shortly after that. In January 2016, Aldi Süd, the German supermarket chain with stores in the U.S., became the first major European retailer to ban pesticides toxic to bees. In April 2016, major pesticide manufacturer Scotts Miracle Gro announced that it will immediately begin phasing out neonicotinoid insecticides, including imidacloprid, clothianidin, and dinotefuran, from its outdoor-use Ortho brand



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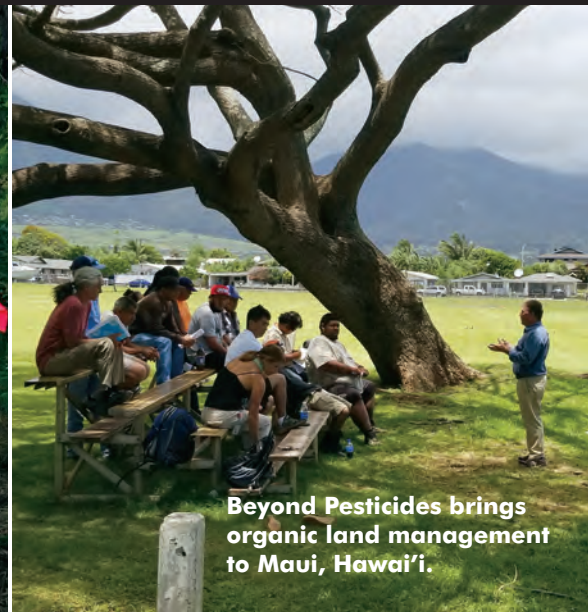
this year. Smaller local stores are leading the charge as well, by removing bee-toxic neonicotinoids from store shelves and working to reorient customers toward holistic organic practices—over 18 retailers in the Boulder, Colorado area have signed a “pollinator safe retail” pledge.

Eliminating the sale of harmful pesticides does not mean that retailers will have nothing left to sell to their customers. Last year, Beyond Pesticides released its video, *Making the Switch*, and *The Well Stocked Hardware Store*, an online toolkit that identifies organic compatible products for hardware stores seeking to find replacement products that can be used with an organic systems approach to land management.

## San Juan Capistrano, CA Passes Organic Landscape Policy

San Juan Capistrano (SJC) in April became the latest community in Orange County, CA to pass an organic landscaping policy for city parks and open spaces. The city’s move was brought forward by a strong contingent of local advocates, health practitioners, and city officials working together to safeguard public health and the environment. By a vote of 4-0-1, SJC’s City Council put the community on the cutting edge of local changes to pesticide use that are taking place across the country.

SJC’s policy is the result of persistent pressure and engagement by community group Non-Toxic San Juan Capistrano with city officials. A change.org petition hosted by the group, which received over 300 signatures, detailed the discussions and responses the group received from local leaders. At the time the City Council took up the issue at a mid-April meeting, Mayor Kerry Ferguson made a strong statement indicating that, “Chemical pesticides . . . have been proven to be toxic to children,



**Beyond Pesticides brings organic land management to Maui, Hawai’i.**

pets, and the general public.” Mayor Ferguson further said, “While [chemical pesticide] use is somewhat limited in our parks and open spaces at the present time, it would be helpful for a policy to be put into place that gives clear guidelines to present and future contractors to guide them in their practice on our city properties.”

The city’s new policy provides these clear guidelines by prioritizing “long-term prevention and suppression of pest problems” and putting a focus on “prevention and non-chemical control measures before the use of pesticide controls.” The measure directs landscape managers to use a prioritized approach to pest management by choosing plants with low susceptibility to pests, forgoing treatment unless necessary, and, when treatment is required, apply organic pesticides first, and U.S. Environmental Protection Agency “caution” labeled pesticides only “when deemed necessary to protect public health and economic impact. . .”

## Maui County, HI Starts Organic Management of Parks and Roadsides in Pilot Project

Four parks in Maui, Hawai’i, have kicked off a year-long pesticide-free pilot program to transition to organic

management. A series of training events in May focused on soil-based approaches to land management. Beyond Pesticides’ executive director, Jay Feldman, and Beyond Pesticides board member Chip Osborne, president of Osborne Organics, taught training sessions with county Parks and Recreation staff, “discussing lawn care that relies less on outside products and feeds the soil, not just the plant.” Beyond Pesticides is working to support the pesticide-free parks movement in Maui by sponsoring these training sessions for Maui County Parks, Department of Transportation (DOT), Maui public schools, several local resorts, and golf course management groups. Beyond Pesticides’ board member Lani Malmberg, of Goats Green, used 60 goats to show the state DOT how to replace the herbicide Roundup (glyphosate) with more sustainable managed goat grazing.

Beyond Pesticides is working with Maui County to provide guidance on transitioning its parks to organic practices. Analysis of soil samples at each site has been conducted, which will provide a baseline to implement cultural changes to improve the biological health of the soil, making it more resistant to weed and insect pressures. The next step includes creation of a report and action plan for each county park by Beyond Pesticides and Osborne Organics, detailing the timeline for implementing practices of soil improvement

and long-term management. In discussing the parks' pilot program with Maui News, Chip Osborne stated, "There was a lot of fungal life and a lot of bacterial life [in these soils], but it wasn't active. All the years of pesticides and salt-based fertilizers had diminished it. So the first thing that's going to happen—far more important than a bag of fertilizer—is to restore that biological level." These programs give land managers the knowledge, understanding, and tools necessary to make a broader transition to organic land care.

## Consumers Sue Monsanto for Misleading Labeling of Roundup Herbicide

In late June, a lawsuit was filed in a Wisconsin federal court against Monsanto, the manufacturer of Roundup brand herbicides, and Scotts Miracle-Gro Company, a marketer of Roundup brand products. The complaint, filed by six consumers from states around the country, focuses on the promotion, marketing, and sale of Roundup brand products, rather than physical injury from the pesticide products. The lawsuit alleges that Monsanto and Scotts label, advertise, and promote their Roundup products with the "false statement that Roundup's active ingredient, glyphosate, targets an enzyme that is not found 'in people or pets.'" Plaintiffs assert that this is a false and deceptive claim, as this enzyme is found in the gut bacteria of people and pets and glyphosate can disrupt the health and functioning of their immune system.

This suit mirrors the lawsuit filed by Beyond Pesticides and Organic Consumers Association in April 2017 against Monsanto for misleading the public by labeling the weedkiller Roundup as "target[ing] an enzyme found in plants but not in people or pets." Monsanto aggressively markets Roundup as safe for humans and animals, despite newer studies indicating that glyphosate is

carcinogenic and affects human and animal cardiovascular, endocrine, nervous, and reproductive systems. No reasonable consumer seeing these representations would expect that Roundup targets a bacterial enzyme that is found in humans and animals and affects the health of their immune system.

In the latest lawsuit against Monsanto and Scotts, plaintiffs seek "compensation for themselves and Class Members equal to the amount of money they paid for Roundup products that they would not have purchased had they known the truth, or in the alternative, the amount of money they paid based on the false statement." The defendants use these false statements for marketing purposes, including video ads on their YouTube channels and websites and on their Roundup weedkiller labels.

## Citing a Serious Health Threat, Over 200 International Scientists Call for Limit on Antibacterial Triclosan

More than 200 international scientists and medical professionals have signed the Florence Statement on Triclosan and Triclocarban, which states that triclosan and its chemical cousin triclocarban pose a risk to human health. It urges the international community to limit use of these antimicrobials, which are associated with bacterial resistance and are no more effective than soap and water. In 2016 after manufacturers failed to prove efficacy, the U.S. Food and Drug Administration (FDA), which regulates cosmetic triclosan products, announced that manufacturers must, by September 2017, remove triclosan from over-the-counter hand soaps. The agency still allows the chemical in toothpastes and other products, such as hand wipes.

The Florence Statement on Triclosan and Triclocarban is "based on extensive



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peer-reviewed research," and "concludes that triclosan and triclocarban are environmentally persistent endocrine disruptors that bioaccumulate in and are toxic to aquatic and other organisms." The statement includes evidence of human health threats, and provides recommendations intended to mitigate harm from triclosan, triclocarban, and other similar antimicrobials.

The Environmental Protection Agency (EPA), which regulates triclosan in household items, textiles and plastics, still permits wide use of the chemical in a range of products. EPA has not been receptive to petitions and requests to cancel registered products containing triclosan. In May 2015, EPA issued its long-awaited response to a petition filed by Beyond Pesticides and Food & Water Watch, denying the request. This means that non-cosmetic consumer products containing triclosan (frequently marketed as microban) are still being sold in stores. These chemicals are in all types of products, from toys, cutting boards, hair brushes, sponges, and computer keyboards to socks and undergarments.

*Be conscious of labels when buying products, such as toothpaste and consumer products. When purchasing home products, you can research whether or not they contain triclosan and plan to avoid buying those products.*