

## Environment &amp; Energy Report

# Dozens of Chlorpyrifos Lawsuits Coming Over Children's Health

By Emily C. Dooley

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- Chlorpyrifos banned for home use 20 years ago
  - Residue of chlorpyrifos analog found in homes, cars
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The recent lawsuits filed against Corteva Inc. and Dow Chemical Co. in California are the beginning of an expected wave of toxic tort cases in the Golden State that take aim at the widely-used insecticide chlorpyrifos.

More than 80 lawsuits will be filed in four Central Valley Superior courts in coming weeks, and another 200 are being evaluated, said Stuart Calwell, an attorney with the West Virginia firm Calwell Luce diTrapano PLLC. They will focus on the insecticide, as well as the compound it converts into and its health effects on children.

The lawsuits could represent the next big agriculture-related toxic tort case, following the path of glyphosate, the Monsanto—now Bayer AG—weedkiller that is at the center of thousands of cases across the U.S., said Clifford Pascarella, a defense attorney with CMBG<sub>3</sub> Law in Boston.

All of the suits vary to some degree, but they center on the same idea: chlorpyrifos degrades into an analog that is 1,000 times more toxic than its parent. That residue can stick around, clinging to walls, car dashboards, and even a teddy bear. Exposure to the insecticide in the womb and in early childhood can cause a variety of developmental health issues, including autism, obesity, and vision problems, according to the latest lawsuit filed Tuesday.

"It's a pretty grim picture out there," Calwell said.

The Environmental Protection Agency last year announced it wouldn't ban chlorpyrifos, saying data supporting objections to the pesticide's use was "not sufficiently valid, complete, or reliable." It said it would continue to monitor the safety of chlorpyrifos through 2022.

### **Punitive Damages Sought**

The lawsuits focus on punitive damages for pain and suffering, lost wages, medical costs, and other harms.

Water suppliers, governments, pesticide applicators, and others also could be named in cases filed in Kings, Tulare, Fresno, and Madeira counties.

Other actions may be sought. Samples taken in 26 homes as part of the lawsuit preparation have also detected the analog chlorpyrifos oxon on common surfaces in homes and cars. As a result, Calwell said he and the team of lawyers may seek mass decontamination of homes or other sites.

"If you want to stop exposure, you're going to have to engage in some sort of remediation," he said.

Corteva and Dow didn't immediately respond to requests for comment.

### **Widely Used**

Like glyphosate, an ingredient in the popular weedkiller Roundup, chlorpyrifos has been used widely. It was first registered in 1965 and helps control pests on a number of high-value crops, including almonds, alfalfa, walnuts, and oranges.

"We're talking about decades' worth of use," Pascarella said. "There's a great potential that there's a lot of people that have been exposed to chlorpyrifos."

The big hurdle will be describing the general dangers of the insecticide, and then the specific instances that caused harm to each plaintiff. "They have to be connected by the expert testimony," Pascarella said.

The science also has to be solid, because any gray areas will be subject to intense scrutiny, he said.

Birth defect cases in general are very hard to prove, said R. Brent Wisner, who represented school groundskeeper Dewayne Lee Johnson in his 2018 case against Monsanto that yielded a \$289 million verdict, since cut down to \$20.5 million and affirmed by the California Supreme Court Oct. 21.

### **'Tough Case'**

In that case, a jury in San Francisco found that glyphosate caused Johnson's non-Hodgkin lymphoma. The verdict sparked a landslide of settlements and new cases.

Wisner, with the Los Angeles firm Baum Hedlund Aristei & Goldman PC, said he considered, and decided against, taking some chlorpyrifos cases.

"I think it's going to be a very important case and the science is very strong," he said. "The problem is, birth defects cases are very, very difficult to prove."

An autism claim also could come up against the "million other theories that juries believe that cause autism" such as vaccines, diet, and smoking, Wisner said. "It's a tough case," he said.

### **'Ongoing Nightmare'**

Chlorpyrifos has a long history.

The EPA fined a Dow company in 1995 for not reporting adverse incidents related to pesticides, including the chlorpyrifos brand Dursban. Five years later, EPA banned Dursban from residential use. And in 2002, the U.S. Department of Agriculture found that when chlorpyrifos mixed with water treated with chlorine, it quickly converted into chlorpyrifos oxon. Sunlight also sped up degradation.

Chlorpyrifos oxon is 1,000 times more toxic than its parent, the USDA found. Calwell said it closely resembles sarin gas as a neurotoxin, and certain segments of the population can be more susceptible.

"The practical effect is this unregistered pesticide is being sprayed," he said.

As of January, commercial use of all but the granular form of chlorpyrifos will be banned in California. The state took action after the Trump administration reversed an Obama-era decision to ban the product, said Jane Sellen, co-director of Californians for Pesticide Reform, an arm of Pesticide Action Network, which helped force the federal action through a lawsuit.

"Now we're dealing with the aftermath," she said. "I think this is going to be an ongoing nightmare."

California's Department of Pesticide Registration samples for chlorpyrifos and its analogs as part of its air monitoring program, though the agency doesn't test inside air, director Val Dolcini said.

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