



July 13, 2022

Monet Vela
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1001 I Street, 23rd Floor
PO. Box 4010
Sacramento, California 95812-4010

Submitted electronically via <https://oehha.ca.gov/comments>

RE: CropLife America and RISE Comments Regarding California Environmental Protection Agency's June 28, 2022 Notice of Augmentation of Record and 15-Day Public Comment Period for Exposures to Glyphosate from Consumer Products

Dear Ms. Vela:

CropLife America and RISE (Responsible Industry for a Sound Environment) appreciate the opportunity to provide these comments to the Office of Environmental Health Hazard Assessment (OEHHA) in response to OEHHA's June 28, 2022 "Notice of Augmentation of Record" with respect to the proposed regulation to add Sections 25607.48 and 25607.49, relating to warnings for exposures to glyphosate from consumer products.

Pursuant to the Notice of Augmentation, OEHHA states that it is adding two documents to the administrative record in light of "the recent 9th Circuit Court decision in *NRDC v US Environmental Protection Agency* (Case No. 20-70787 and No. 20-70801 – Filed June 17, 2022)" (the *NRDC* Decision). Specifically, OEHHA proposed to include: (i) US EPA, Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential (Dec. 12, 2017) (Revised Glyphosate Issue Paper), and (ii) US EPA, Glyphosate: Report of the Cancer Assessment Review Committee (CARC), Evaluation of the Carcinogenic Potential of Glyphosate (Oct. 1, 2015) (CARC Report). CropLife America and RISE agree that inclusion of these documents is appropriate, because each of these documents confirms EPA's longstanding conclusion that glyphosate is not likely to be carcinogenic to humans. And EPA's conclusion is consistent with the worldwide regulatory consensus. Indeed, in May 2022 "[b]ased on a wide-ranging review of scientific evidence," the European Chemicals Agency's Committee for Risk Assessment "conclude[ed] that classifying glyphosate as a carcinogen is not justified."¹

¹ <https://echa.europa.eu/-/glyphosate-no-change-proposed-to-hazard-classification#:~:text=ECHA%27s%20Committee%20for%20Risk%20Assessment,a%20carcino gen%20is%20not%20justified.>

As outlined more fully in our prior comments dated October 7, 2021 and May 5, 2022, CropLife America and RISE continue to oppose OEHHHA's proposed amendments that would require consumer products containing glyphosate to include a misleading cancer warning that is at odds with both the weight of scientific authority and the decision of the U.S. District Court for the Eastern District of California in *National Association of Wheat Growers v. Becerra*, 468 F. Supp. 3d 1247 (E.D. Cal. 2020). There, Judge Shubb permanently enjoined California from imposing a Proposition 65 warning on glyphosate products, because such a warning necessarily violates the First Amendment. The court ruled that "the State of California may not skew the public debate by forcing companies to adopt the state's determination that glyphosate is a carcinogen, relying solely on the IARC's determination, when the great weight of evidence indicates that glyphosate is not known to cause cancer." *Id.* at 1260.

The Revised Glyphosate Issue Paper and CARC Report reinforce that OEHHHA's proposed amendments requiring a Proposition 65 cancer warning for glyphosate products violate the First Amendment. Those documents provide further support that glyphosate does not cause cancer, and that OEHHHA's contrary proposed warning would be therefore false and highly misleading.

In the Revised Glyphosate Issue Paper, EPA's Office of Pesticide Programs concluded that, based on the weight of available evidence concerning glyphosate's potential carcinogenicity, "the strongest support is for 'not likely to be carcinogenic to humans,'" and "there is not strong support for the 'suggestive evidence of carcinogenic potential' cancer classification descriptor based on the weight-of-evidence." Revised Glyphosate Issue Paper at 143.

Similarly, in the CARC Report, EPA's CARC, of the Office of Pesticide Programs, concluded that "based on the weight-of-evidence, glyphosate is classified as 'Not Likely to be Carcinogenic to Humans.'" CARC Report at 10. Among other findings, the CARC determined that "[i]n experimental animals, there is no evidence for carcinogenicity," and that "there is no in vivo genotoxic or mutagenic concern for glyphosate." *Id.* These findings are consistent with the global consensus of regulators that glyphosate is not likely to be carcinogenic to humans. EPA and regulators worldwide have carefully reviewed IARC's classification of glyphosate as "probably carcinogenic to humans," including all of the studies on which IARC relied and numerous additional studies that IARC did not consider, and concluded that IARC is wrong.

EPA's Revised Glyphosate Issue Paper and CARC Report reflect EPA's longstanding and continuing position on glyphosate. These documents provide further support for CropLife and RISE's view, conveyed in our May 5, 2022 letter, that no Proposition 65 warning is appropriate for glyphosate. And they reinforce that, if OEHHHA adopts any warning at all, it should lead with the consensus view of EPA and regulators worldwide: that "[t]he United States Environmental Protection Agency ('US EPA') has determined that glyphosate is not likely to be carcinogenic to humans" and that "[n]umerous other authorities worldwide have also determined that glyphosate is not likely to be carcinogenic to humans."

The Ninth Circuit's *NRDC* Decision does not change EPA's long-standing conclusion regarding the safety of glyphosate. Although the court found fault in EPA's explanation of its assessment in EPA's January 2020 Interim Registration Review Decision for glyphosate (Interim Decision), the Ninth Circuit did not vacate or otherwise disturb EPA's 2017 Revised Glyphosate Issue Paper, or its 2015 CARC Report, which continue to reflect EPA's position on glyphosate.

Nor did the Ninth Circuit take any action that would preclude EPA from reaching its same conclusion, on remand, that “glyphosate is not likely to be carcinogenic to humans.” To the contrary, the Ninth Circuit recognized that “EPA could come to the same human-health conclusion on remand,” provided that EPA provided an updated “explanation” for its conclusion in its Interim Decision that “glyphosate is not likely to be carcinogenic to humans.” *NRDC* at 34.

Accordingly, EPA’s prior determinations that glyphosate should be classified as “not likely to be carcinogenic to humans” remain in place and remain consistent with worldwide regulatory consensus. Therefore, for all of the reasons CropLife America and RISE have previously explained, OEHHA’s proposed Proposition 65 cancer warning for glyphosate is highly misleading and should not be adopted.

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CropLife America and RISE appreciate the opportunity to provide these comments on OEHHA’s regulatory approach to glyphosate-based pesticides. Should OEHHA have any questions or wish to discuss these issues further, please do not hesitate to contact us.

Thank you for your consideration of these comments.

Sincerely,



Chris Novak
President and CEO
CropLife America



Megan J. Provost
President
RISE