

EPA Approval of Pesticide Paraquat Now Under Attack

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On September 23, 2021, several farmworker groups, green groups, and health organizations challenged EPA's reapproval of paraquat dichloride. Paraquat dichloride, known simply as paraquat, is a weed killer. It has been widely used in the United States since the 1960s. Petitioners seek to set aside EPA's interim registration review decision. They allege links to Parkinson's disease and other adverse health effects. Numerous lawsuits are already pending against manufactures of the widely used pesticide.

EPA's Review and Reapproval of Paraquat

The Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") mandates that all pesticides distributed or sold in the United States be registered by EPA.^[1] An applicant seeking to register a pesticide must show that the pesticide will not cause unreasonable adverse effects to human health or to the environment when applied as directed on the label. Following initial approval for registration by EPA, a registered pesticide is to be reviewed by EPA every 15 years. This reevaluation is intended to ensure that the registered pesticides can still be safely used, according to the best available science.

Paraquat was first approved in 1964. It is classified a restricted-use pesticide ("RUP"). This means that only trained, certified applicators can use it. It is not accessible to the general public or for application in residential areas. Nevertheless, there have been deaths by accidental ingestion, often after the chemical was transferred to unlabeled food containers.^[2]

Paraquat's registration review began in December 2011. As part of the review, EPA issued updated human health and ecological risk assessments. In October 2019, EPA released the draft assessments for public comment.^[3] Then in October 2020, EPA issued its proposed interim decision and addendum to the draft human health risk assessment.^[4] After review of public comments, in July 2021, EPA's interim registration decision approved the continued use of paraquat with certain new mitigation measures. These address potential human health risks identified.^[5] Examples include acreage limits for certain aerial applications of paraquat, required residential drift buffers, and prohibition of human flaggers.

Environmental Litigation Mounting

EPA did not find a “clear link between paraquat exposure from labeled uses and adverse health outcomes such as Parkinson’s disease and cancer.”^[6] Petitioners disagree. The petition for review filed in the United States Court of Appeals for the Ninth Circuit on September 23, 2021, seeks to set aside EPA’s reapproval of paraquat because of its alleged health impacts on farmworkers and agricultural communities.^[7] Petitioners point to the 32 other countries that have already outlawed paraquat. They also cite studies connecting paraquat exposure to increased risk of Parkinson’s.^[8]

Meanwhile, manufacturers of paraquat are facing numerous personal injury lawsuits. These are related to paraquat’s alleged latent health impacts—most notably, Parkinson’s. The first lawsuits were filed in 2017. The case count continues to grow.^[9] In June, The Judicial Panel on Multidistrict Litigation created a new MDL for such claims in the Southern District of Illinois.^[10] More than 200 members’ cases have been opened to date. As we have seen recently with other chemicals—including and glyphosate—regulatory actions and litigation regarding EPA and other health organization risk assessments may further private-party litigation.

For further information or questions about how regulatory actions on toxics like paraquat may impact your business, compliance obligations, and risk, please contact Jonathan D. Brightbill (Partner, White Collar, Regulatory Defense and Investigations/Environmental Litigation), Madalyn Brown (Associate, Environmental), or your Winston relationship attorney.

We note that government orders on the federal, state, and local level are changing every day, and the information contained herein is accurate only as of the date set forth above.

^[1] 7 U.S.C. § 136 et seq.

^[2] *Paraquat Dichloride: One Sip Can Kill*, EPA <https://www.epa.gov/pesticide-worker-safety/paraquat-dichloride-one-sip-can-kill>.

^[3] *Paraquat Dichloride: Draft Human Health Risk Assessment in Support of Registration Review*, EPA (Oct. 15, 2019), <https://www.regulations.gov/document/EPA-HQ-OPP-2011-0855-0121>; *Paraquat: Preliminary Ecological Risk Assessment for Registration Review*, EPA (Oct. 15, 2019), <https://www.regulations.gov/document/EPA-HQ-OPP-2011-0855-0128>.

^[4] *Paraquat Dichloride Proposed Interim Registration Review Decision*, EPA (Oct. 23, 2020), <https://www.regulations.gov/document/EPA-HQ-OPP-2011-0855-0209>.

^[5] *Paraquat Dichloride Interim Registration Review Decision Case Number 0262*, EPA (Aug. 2, 2021), <https://www.regulations.gov/document/EPA-HQ-OPP-2011-0855-0307>.

^[6] *EPA Finalizes New, Stronger Safety Measures for Pesticide Paraquat*, EPA (Aug. 2, 2021), <https://www.epa.gov/pesticides/epa-finalizes-new-stronger-safety-measures-pesticide-paraquat>.

^[7] *CRLAF v. USEPA*, Case No. 21-71287.

^[8] *Groups Sue EPA for Allowing Use of Deadly Pesticide for 15 More Years*, Earthjustice (Sept. 24, 2021), <https://earthjustice.org/news/press/2021/groups-sue-epa-for-allowing-use-of-deadly-pesticide-for-15-more-years>.

^[9] Emily Field, *Product Liability Cases To Watch: Midyear Review*, Law360 (July 9, 2021, 11:21 AM EDT), <https://www.law360.com/articles/1400730/product-liability-cases-to-watch-midyear-review>.

^[10] *In re Paraquat Prods. Liab. Litig. v. Syngenta Crop Protection LLC*, Case No. 3:21-md-03004.

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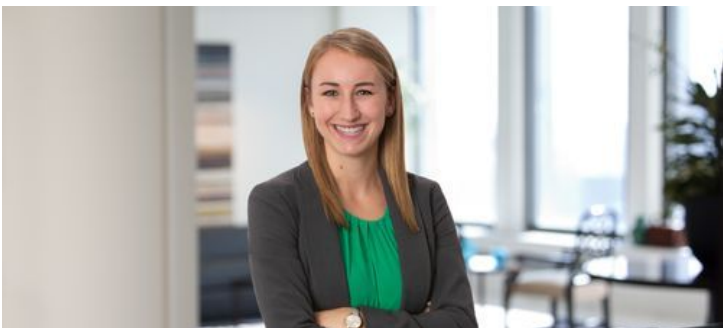
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