Message

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Sent: 9/4/2019 2:39:20 PM
To: Cole, Joseph E. [cole.josephe@epa.gov]; Perlis, Robert [Perlis.Robert@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]
Subject: FYI - WSJ editorial on prop 65/glyphosate

Flagging this WSJ editorial on prop 65 (below):

Wall Street Journal
A Scientific Roundup
The EPA intervenes against California's rogue cancer regulation.
https://www.wsj.com/articles/a-scientific-roundup-11567551770
Editorial Board

Perhaps you've read that science should rule when determining environmental standards. So why aren't progressives cheering an Environmental Protection Agency order declaring that the chemical glyphosate doesn't cause cancer?

In an extraordinary intervention, the EPA recently said it will no longer approve product labels that claim glyphosate is carcinogenic to humans. Glyphosate is the active ingredient in Roundup, the popular weed killer. The herbicide has been on the U.S. market since 1974, and the scientific consensus is that it isn't carcinogenic in humans.

The letter is a rebuke to California, which in 2015 said it would add glyphosate to its official list of carcinogens under the state's 1986 Safe Drinking Water and Toxic Enforcement Act, known as Proposition 65. California cited the World Health Organization's International Agency for Research on Cancer's finding that glyphosate "probably" causes cancer.

This is the U.N. outfit that has warned against cancer from pickled vegetables, caffeine and working the night shift. California's move has inspired a flood of lawsuits against Roundup-maker Monsanto, including a $2 billion jury judgment (reduced to $86 million by a judge) in May for a California couple claiming glyphosate caused their cancer.

EPA's letter is an attempt to restore science to the glyphosate debate and counter California's rogue regulation. The letter cites EPA's extensive review of the scientific literature on glyphosate, as well as the concurring judgments of regulators in Canada, Australia, the European Union, Germany, New Zealand and Japan.

The agency also cites its labeling authority under the Federal Insecticide, Fungicide, and Rodenticide Act, which should pre-empt state law. The EPA letter says it "considers the Proposition 65 warning language based on the chemical glyphosate to constitute a false and misleading statement."

The EPA letter should also be evidence in current litigation brought by farm groups against California. In 2018 a federal judge issued a preliminary injunction against California, finding the farm plaintiffs would likely prevail in their claims that the state's cancer-label requirement violates their First Amendment rights.

California's Office of Environmental Health Hazard Assessment responded to the EPA letter by calling it "disrespectful of the scientific process," but the opposite is true. California is the regulatory outlier attempting to impose its standards despite the precedent that federal law sets national standards on health and safety when Congress's language is clear.

The EPA might also make a difference in thousands of lawsuits against glyphosate manufacturers. Many of the suits claim Monsanto and others failed to warn consumers about cancer risks, and defendants can now point out that they are barred by federal regulators from issuing such warnings.

California state judges overseeing current glyphosate lawsuits have largely excluded EPA's conclusions as evidence in court. But anyone who cares about science and the law should welcome the EPA's intervention.