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May 4, 2016

National Freedom of Information Officer
U.S. Environmental Protection Agency
1301 Constitution Avenue, NW, Room 6416 West
Washington, D.C. 20004
Phone: (202) 566-1667

Hand Delivery

Re: Freedom of Information Act Request

Dear Sir or Madam:

For over 40 years, the EPA – and all other regulatory and scientific agencies worldwide who have reviewed glyphosate – have concluded that glyphosate does not pose a cancer risk to humans. This includes the European Commission, the Joint WHO/Food Agricultural Organization, Japan and Australia.[1] In March 2015, however, after review of the same glyphosate data previously reviewed by these entities, the International Agency for Research on Cancer (IARC) concluded differently – finding that glyphosate is "probably carcinogenic to humans." That conclusion spurred much criticism, including from national regulators who responded that the evidence *did not* support IARC's conclusion. *See, e.g.,* European Food Safety Authority (EFSA), Conclusion on the Peer Review of the Pesticide Risk Assessment of the Active Substance Glyphosate, EFSA Journal 2015; 13(11):4302 (Nov. 12, 2015) ("glyphosate is unlikely to pose a carcinogenic hazard to humans and the evidence does not support classification with regard to its carcinogenic potential . . .").[2]

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1 *See, e.g.,* U.S. Environmental Protection Agency, *Glyphosate; Pesticide Tolerances*, 78 Fed. Reg. 25,396 (May 1, 2013); Australian Pesticides and Veterinary Medicines Authority (2013), http://archive.apvma.gov.au/news_media/docs/glyphosate_scitox_review_july_2013.pdf; European Commission, Report for the Active Substance Glyphosate, Directive 6511/VI/99 (Jan. 21, 2002), http://ec.europa.eu/food/fs/ph_ps/pro/eva/existing/list1_glyphosate_en.pdf; Report of Evaluation by Food Sanitation Council Agricultural Chemicals Residue Committee, *Shokuhin Eisei Kenkyu* Vol.50, No.8 (2000); WHO/FAO, Pesticides Residues in Food 2011, http://www.fao.org/fileadmin/templates/agphome/documents/Pests_Pesticides/JMPR/Report11/Glyphosate.pdf.

2 Health Canada, Pest Management Regulatory Agency, *Proposed Re-evaluation Decision PRVD2015-01, Glyphosate* (Apr. 13, 2015), http://www.hc-sc.gc.ca/cps-spc/pest/part/consultations/_prvd2015-01/prvd2015-01-eng.php ("the overall weight of evidence indicates that glyphosate is unlikely to pose a human cancer risk."); Germany Federal Institute for Risk Assessment, *Does Glyphosate Cause Cancer?* (Mar. 23, 2015) (emphasis added), http://www.bfr.bund.de/cm/349/does-glyphosate-cause-cancer.pdf. ("the Federal Institute for Risk Assessment (BfR) was responsible for the human health risk assessment and *has*

The IARC decision also prompted EPA to task its Cancer Assessment Review Committee ("CARC") with re-reviewing the available glyphosate data using the Agency's established protocol and in accordance with EPA's *Final Guidelines for Carcinogen Risk Assessment* (March, 2005). The CARC is the Agency's independent peer review body for pesticide carcinogenicity classifications.[3]

On April 29, 2016, it became apparent that the CARC's "Final Report" regarding glyphosate has been complete since October 1, 2015, and – like Germany and other recent scientific reviews – that the CARC concluded glyphosate should be classified as "Not Likely to be Carcinogenic to Humans."[4] The CARC Committee included 13 independent career scientists from EPA's Office of Pesticide Programs and EPA's Office of Research and Development, all of whom signed the final report. The CARC reviewed all the mutagenicity studies, toxicology studies and epidemiology studies (including, among others, the Department of Health and Human Service's large, prospective Agricultural Health Study), with a particular focus on those studies that IARC found persuasive. The CARC's "Final Report" specifically considered and rejected each of the lines of evidence found persuasive by IARC.

On Friday, April 29, 2016, the CARC's Final Report was finally posted in the glyphosate docket. The posting generated significant media attention and a multitude of communications seeking to persuade EPA to remove the report from its website. On Monday May 2, 2016, EPA removed the CARC Final Report and related documents from the docket. EPA's rationale for removing the documents was as follows:

> Preliminary glyphosate documents were inadvertently posted to the Agency's docket. These documents have now been taken down because our assessment is not final. EPA has not completed our cancer review. We will look at the work of other governments as well as work by HHS's Agricultural Health Study as we move to make a decision on glyphosate. Our assessment will be peer reviewed and completed by the end of 2016.

EPA's rationale is surprising. The CARC Final Report is clearly final; indeed, the word "FINAL" appears in all caps on every single page of the document.[5] Moreover, the Cancer Assessment Review Committee ***is*** the Agency's peer reviewer for carcinogenicity assessments, reviewing preliminary cancer determinations prepared by scientists in the Office of Pesticide

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assessed glyphosate as non-carcinogenic. This was supported by competent national, European and other international institutions for health assessment including the WHO/FAO Joint Meeting on Pesticide Residues (JMPR)."; http://www.fsc.go.jp/fsciis/meetingMaterial/show/kai20160324no1.

3 See https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/evaluating-pesticides-carcinogenic-potential ("The results of the independent review [by the Office of Pesticide Programs] are peer-reviewed by the Cancer Assessment Review Committee.").

4 EPA, "Glyphosate: Report of the Cancer Assessment Review Committee," p. 10 (October 1, 2015).

5 *See* EPA, "Glyphosate: Report of the Cancer Assessment Review Committee," (October 1, 2015).

Programs.[6] This is not a new process; the CARC has been performing the same function for at least 30 years.[7] And, the CARC Final Report already includes detailed consideration of HHS's Agricultural Health Study – which EPA references in its rationale above – and concludes that that study did not provide any evidence of an association between glyphosate and any form of cancer.[8] Thus, it is unclear what additional "work by HHS's Agricultural Health Study" needs to be considered.

FOIA REQUEST

This letter is intended to seek information pursuant to the Freedom of Information Act (FOIA), as amended, 5 U.S.C. §§ 552, et seq., relevant to the "CARC Final Report" (EPA, "Glyphosate: Report of the Cancer Assessment Review Committee," (October 1, 2015)). Latham & Watkins LLP hereby requests the following:

- Documents and all records of communications relating to the ***posting*** or ***removal*** of the CARC Final Report, and all related documents, from www.epa.gov and/or the glyphosate docket, and the Agency's supporting rationale for this decision. This request includes but is not limited to:
    - Voicemail and email communications (including from private email servers) between EPA employees discussing or relating to the CARC Final Report and/or posting of the CARC Final Report, or removing the CARC Final Report from the website and/or glyphosate docket; and
    - Any other voicemail and email communications (including from private email servers) between EPA employees and employees of other U.S. government agencies or entities, the International Agency for Research on Cancer (IARC), not-for-profit organizations, Dr. Christopher Portier, Dr. Ivan Rusyn and/or any other persons regarding posting of the CARC Final Report or removal of the CARC Final Report from the website and/or glyphosate docket.
- Documents and all records of communications relating to the decision to delay public release of the CARC Final Report from October 1, 2015 (when it was finalized) until the present. This requests includes, but is not limited to:
    - Voicemail and email communications (including from private email servers) between EPA employees; and

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6 *See* https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/evaluating-pesticides-carcinogenic-potential ("The results of the independent review [by the Office of Pesticide Programs] are peer-reviewed by the Cancer Assessment Review Committee.").

7 EPA, *Chemicals Evaluated for Carcinogenic Potential: Annual Cancer Report 2015, available at* http://npic.orst.edu/chemicals_evaluated.pdf (describing process identifying chemicals evaluated through this process starting in 1985).

8 EPA, "Glyphosate: Report of the Cancer Assessment Review Committee," pp. 8, 14-15, 26-27, 38 (October 1, 2015).

- Any other voicemail and email communications (including from private email servers) between EPA employees and employees of other U.S. agencies, IARC, not-for-profit organizations, Dr. Christopher Portier, Dr. Ivan Rusyn and/or any other persons.

- Documents relating to any meetings or communications since 2013 with any non-U.S. government persons or entities regarding or relating to IARC's review or analyses of glyphosate, including:
  - Any log of any such meetings; and
  - Any electronic or other correspondence regarding the same.

We request that you provide us with accurate copies of the documents requested, and agree to pay reasonable search and production costs. This is a commercial request.

We understand that EPA is required to respond to this request within twenty working days. We prefer electronic copies of the documents, but if courier or overnight delivery is necessary, please contact us for delivery or pickup information.

Thank you for your prompt attention to this matter.

Best regards,

Philip J. Perry
Claudia M. O'Brien
of LATHAM & WATKINS LLP

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