

Sayers, Margery

From: Rigby, Christiana
Sent: Friday, November 1, 2019 9:54 AM
To: Sayers, Margery
Subject: FW: CB 51 Additional information
Attachments: JessRowlandMarionCopelyfiling.pdf

From: Meagan Braganca <mbragancatrl@gmail.com>
Sent: Friday, November 1, 2019 9:41 AM
To: Walsh, Elizabeth <ewalsh@howardcountymd.gov>; Jung, Deb <djung@howardcountymd.gov>; Jones, Opel <ojones@howardcountymd.gov>; Rigby, Christiana <crigby@howardcountymd.gov>; Yungmann, David <dyungmann@howardcountymd.gov>
Subject: CB 51 Additional information

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

All:

I attended the work session that was held last Monday 10/28 and was witness to the unfortunate, misleading statements made to you by the speaker from University of Maryland. While he correctly said that the EPA has claimed the safety of glyphosate, he was very misleading in his presumptions that the EPA is claiming this based on consensus fact.

While the current official classification of glyphosate is Class E non carcinogenic, the EPA's initial classification was Class C carcinogen and only changed it after industry pressure. EPA scientists who have studied glyphosate and its properties as a chelating agent have found that glyphosate characteristics display all fourteen tumor formation causations chelating agents tend to present. Please see the letter from Marion Copley on page 11 attached.

In addition, the EPA is nearly, if not *the*, only body claiming the safety of glyphosate [again, amidst an internal environment of disagreement]. A recent DHHS draft report reached a similar conclusion as the World Health Organization: that glyphosate is a carcinogenic risk.

<https://www.nrdc.org/experts/jennifer-sass/atsdr-report-confirms-glyphosate-cancer-risks>

Besides these larger research bodies, scientists around the country have tested this chemical, reviewed data and have concluded that glyphosate should be categorized as carcinogenic/toxic/etc. A few months ago, I spoke at length to the manager of the Thurston County, WA IPM program. He chose to create his own list of terrestrial herbicide categorizations. After his own testing & review he concluded that glyphosate failed to meet the county's safety standards due to its toxicity. <https://www.co.thurston.wa.us/health/ehipm/terrestrialreview.html>

Finally, below is a list of jurisdictions in the U.S. that have either banned or restricted glyphosate. They are not listening to ambulance chasers, but rather enacting restrictions to serve the citizens by whom they were elected. Some of these restrictions have been in place for decades:

Arizona

- **Tucson, Arizona** – Created an organics-first policy for controlling weeds on city property.

California

- **Alameda County, California** – The East Bay Regional Park District, a special district operating regional parks in Alameda and Contra Costa Counties, banned glyphosate around picnic and play areas effective July 2019. [EBRPD plans to formally ban Roundup use in its parks by the end of 2020](#). EBRPD manages 73 parks and 55 miles of shoreline.
- **Arcata, California** – [Initiated a pesticide reduction plan](#) that urges pesticides to only be used as a last resort.
- **Belvedere, California** – [Passed municipal ordinance](#) initiating Integrated Pest Management program that restricts toxic pesticide use and urges pesticide use as last resort.
- **Benicia, California** – [City decided to go glyphosate-free](#) following the verdict in Johnson v. Monsanto Co.
- **Berkeley, California** – [Implemented pest management program](#) to minimize or eliminate the use of pesticides. The city has not used glyphosate since the 1970s, [according to spokesman Matthai Chakko](#).
- **Burbank, California** – [City Council members voted to discontinue the use of Roundup](#) in city parks for one year, and [Burbank Unified School District will no longer use the herbicide](#) due to cancer concerns.
- **Cambria, California** – North Coast school board trustees [formally proposed a ban on glyphosate](#) for all school properties.
- **Carlsbad, California** – The City Council voted unanimously to adopt a policy that makes organic pesticides the preferred method for killing weeds. “Asked to choose between aesthetics and public health...I’m going to choose public health every time,” [said Councilwoman Cori Schumacher](#).
- **Concord, California** – The Mount Diablo Unified School District [unanimously voted to ban glyphosate use](#) on school property.
- **Contra Costa County, California** – The East Bay Regional Park District, a special district operating regional parks in Alameda and Contra Costa Counties, banned glyphosate around picnic and play areas effective July 2019. [EBRPD plans to formally ban Roundup use in its parks by the end of 2020](#). EBRPD manages 73 parks and 55 miles of shoreline.
- **Corte Madera, California** – [Passed ordinance](#) calling for Integrated Pest Management (IPM) program restricting highly toxic pesticides, while also urging for pesticide use to be a last resort.
- **Costa Mesa, California** – [City council adopted an organics-first Integrated Pest Management \(IPM\) policy](#).
- **Davis, California** – [Passed ordinance](#) implementing Integrated Pest Management (IPM) program designed to reduce the use of pesticides. Some city parks do not allow the use of glyphosate.
- **Encinitas, California** – [Banned the use of Roundup and other glyphosate-based weed killers in city parks](#).
- **Fairfax, California** – [Passed municipal ordinance](#) restricting use of toxic pesticides on public property in favor of alternative methods.
- **Fresno, California** – After hearing from concerned parents and employees, [Fresno Unified School District is investigating the use of alternative herbicides](#) that do not contain glyphosate, citing health risks.

- **Greenfield, California** – [Adopted a resolution](#) to “halt all use of the carcinogenic weed killer Roundup and replace it with ‘greener’ alternatives.”
- **Irvine, California** – City Council passed resolution to [cease spraying Roundup and other chemicals on public parks, streets and playgrounds](#).
- **Laguna Hills, California** – [Passed a resolution to test an organics-only pesticide program on two parks](#).
- **Lodi, California** –The city decided to [ban the use of Roundup](#) within 25 feet of playgrounds.
- **Long Beach, California** – Citing the landmark \$289 million verdict [in Johnson v. Monsanto Co.](#), Long Beach Parks & Recreation Director Gerardo Mouet [announced an immediate halt on the spraying of Roundup](#) in Long Beach Parks.
- **Los Angeles County, California** – The Los Angeles County Board of Supervisors issued a moratorium on glyphosate-based herbicides, [including Roundup weed killer](#). In July 2019, the LA County Board of Supervisors [formally banned Roundup](#).
- **Malibu, California** – [The city may implement an Earth Friendly Management Policy \(EFMP\) to avoid the use of pesticides and other chemicals](#).
- **Marin County, California** – The county [stopped using glyphosate, the active ingredient in Monsanto’s Roundup weed killer](#), on all county-maintained parks, landscaping, playgrounds, walkways and parking areas.
- **Mill Valley, California** – [Passed ordinance initiating Integrated Pest Management program](#) that restricts toxic pesticide use and urges pesticide use as last resort.
- **Morgan Hill, California** – [Instituted a pilot program at a city park to assess the possibility of eliminating the use of herbicides](#).
- **Napa, California** – A policy announced in March of 2019 [banned glyphosate use on city property](#), completing a phase-out campaign that started three years ago.
- **Novato, California** – Following the \$289 million Monsanto verdict, [Novato Mayor Josh Fryday said the city will no longer use Roundup weed killer](#).
- **Oakland, California** – [Passed ordinance initiating Integrated Pest Management program](#) that restricts toxic pesticide use and promotes pesticide use as last resort. On Sept. 1, 2018, the city [formally halted the use of Roundup](#). Alameda County is reviewing its chemical spraying practices.
- **Orange County, California** – [OC Parks banned the use of glyphosate](#) on and around playgrounds, picnic shelters, trails and campgrounds. However, glyphosate remains in use on off-trail invasive weeds.
- **Oxnard, California** – [The Oxnard School District board voted to ban Roundup use on campuses](#).
- **Palo Alto, California** – [Pest management program](#) calls for Integrated Pest Management that restricts pesticide use in favor of less harmful methods.
- **Petaluma, California** – City officials are [considering a ban on glyphosate for use in public parks](#).
- **Richmond, California** – Issued an ordinance to [ban the use of glyphosate for all weed abatement activities conducted by the city](#).

- **San Anselmo, California** – Passed city resolution promoting an Integrated Pest Management program restricting the use of toxic pesticides. The program only allows pesticide use as a last resort.
- **San Francisco, California** – Restricts the use of toxic pesticides on public property in favor of alternative, organic methods.
- **San Juan Capistrano, California** – Implemented an organics-first policy to control weeds in city parks and open spaces.
- **San Lorenzo Valley, California** – The San Lorenzo Valley Water District voted 4-1 for a permanent ban of glyphosate pesticide use by the district.
- **San Luis Obispo, California** – San Luis Coastal Unified School District banned all pesticides, including Roundup, on school properties in 2018. Coast Unified School District banned Roundup in the summer of 2019.
- **Santa Barbara, California** – The Santa Barbara Unified School District Board of Education voted to ban glyphosate spraying at all district schools.
- **Santa Rosa, California** – Banned the use of Roundup at city parks.
- **Sonoma, California** – Banned glyphosate use on all city-owned property.
- **Thousand Oaks, California** – City instituted a ban on glyphosate use on public golf courses.
- **Watsonville, California** – City council voted unanimously to ban Roundup use on city property.
- **Woodland, California** – Woodland Joint Unified School District suspended the use of Roundup on school campuses.

Colorado

- **Boulder, Colorado** – Banned Roundup for use on city parks.
- **Durango, Colorado** – Instituted an Organically Managed Lands program to minimize the use of synthetic fertilizers and pesticides.

Connecticut

- **Middletown, Connecticut** – Passed ordinance banning toxic pesticides and herbicides on municipally-owned fields, parks and other property.

A growing number of Connecticut towns, including Branford, Cheshire, Granby, Essex, Greenwich, Manchester, Oxford, Pine Grove, Plainville, Roxbury, Watertown, and Woodbridge have adopted bans or restrictions on glyphosate use. The state also has Public Act 09-56 to eliminate the use pesticides in K-8 schools.

Florida

The Florida Fish and Wildlife Conservation Commission ceased using aquatic herbicides, glyphosate chief among them, anywhere in state waters, while the agency gathers public input.

- **Fort Myers Beach, Florida** – The city has decided to ban Roundup.

- **Key West, Florida** – Key West City Commission banned the use of Roundup on city-owned property, citing a \$2.055 billion jury verdict in California.
- **Martin County, Florida** – The local government instituted a Roundup ban that applies to all county employees and contractors working on county projects.
- **Miami, Florida** – Announced a city-wide ban on glyphosate-based herbicides in February of 2019.
- **Miami Beach, Florida** – Passed a resolution banning the use of glyphosate weed killers for landscaping and maintenance work on city-owned property.
- **North Miami, Florida** – City Council approved a plan calling for the gradual reduction of pesticide use on city property and a study on alternative pesticides.
- **Satellite Beach, Florida** – City Council unanimously approved a resolution that bans the city and its contractors from using glyphosate-based herbicides, including Monsanto's Roundup.
- **Stuart, Florida** – City commissioners voted to ban glyphosate, calling for an integrated pest control plan that reduces the use of glyphosate with the ultimate goal of eliminating chemicals.

Hawaii

In February of 2018, a series of bills moved ahead in the legislature that would regulate pesticides, including Roundup weed killer.

Illinois

- **Chicago, Illinois** – The city stopped spraying glyphosate in public spaces.
- **Evanston, Illinois** – Evanston decided to go pesticide-free in 2010. Glyphosate is banned from use on city property, parks and schools.
- **Franklin Park, Illinois** – Passed resolution promoting an Integrated Pest Management (IPM) policy that restricts highly toxic pesticides and urges for pesticides to be considered as a last resort.
- **Naperville, Illinois** – Created the Sustainable Parks Initiative, which uses organic products and sustainable practices for weed control.
- **Urbana, Illinois** – Adopted the Midwest Grows Green natural lawn care initiative to eliminate synthetic lawn pesticides on city parks.

Iowa

- **Dubuque, Iowa** – City instituted a ban on glyphosate use in public parks.
- **Story County, Iowa** – Eliminated the use of chemical pesticides in six of its mowed turf areas.

Kansas

- **Lawrence, Kansas** – Implemented Integrated Pest Management (IPM) program designed to reduce pesticide use.
- **Wichita, Kansas** – Initiated pilot program that limits or eliminates pesticide use.

Maine

[Dozens of cities and townships in Maine](#) have adopted local ordinances restricting or banning pesticides and herbicides.

- **Portland, Maine** – [Banned synthetic pesticides in March of 2019](#). Private property owners may only use organic treatments on lawns and gardens. No pesticides may be used within 75 feet of a water body or wetland.
- **South Portland, Maine** – [Passed a pesticide plan](#) that discourages property owners from using certain pesticides and herbicides.

Maryland

- **Greenbelt, Maryland** – Adopted [Sustainable Land Care](#) policy for public lands calling for limited use of pesticides.
- **Hyattsville, Maryland** – [Passed ordinance prohibiting the use of toxic pesticides](#) on public property in favor of alternative, organic methods
- **Montgomery County, Maryland** – [County Council voted to ban the use of cosmetic pesticides](#) on private lawns. In December 2018, [Montgomery County Parks announced](#) that it would discontinue the use of glyphosate in parks.
- **Takoma Park, Maryland** – [Placed restriction on cosmetic pesticides](#) for lawn care on public and private property.

Massachusetts

- **Chatham, Massachusetts** – [Passed an order banning glyphosate use in parks, athletic fields, mulch beds and walkways](#).
- **Eastham, Massachusetts** – [Local ordinance](#) requires town employees to receive a permit for use of registered pesticides and prohibits the use of highly-toxic pesticides.
- **Falmouth, Massachusetts** – [Issued a yearlong moratorium on glyphosate use](#).
- **Marblehead, Massachusetts** – Created [Organic Pest Management program](#) to phase out pesticides and herbicides.
- **Warwick, Massachusetts** – [A measure to ban Monsanto's Roundup passed at a Special Town Meeting](#). The ban does not allow people to spray glyphosate on any land within the town.
- **Wellesley, Massachusetts** – Wellesley banned all pesticides in 2011. [Glyphosate is restricted from being sprayed on athletic fields and any city-owned property](#). The chemical can be used in limited emergency weed control situations.

Minnesota

- **Minneapolis, Minnesota** – Commissioners of the Minneapolis Parks and Recreation Board decided to [eliminate all glyphosate-based products from being used in neighborhood parks](#). In October of 2018, the Park Board's Operations & Environment Committee [voted to extend the glyphosate ban](#) to the entire Minneapolis park system.

- **Rochester, Minnesota** – The Parks & Recreation Department initiated a pesticide-free pilot project for city parks.

Nevada

- **Reno, Nevada** – The city initiated a pesticide free pilot program.

New Hampshire

- **Dover, New Hampshire** – Passed resolution calling for Organic Land Management. City utilizes least toxic compounds only when necessary.
- **Portsmouth, New Hampshire** – Passed resolution eliminating the use of toxic pesticides on public property in favor of alternative, organic methods.

New Mexico

- **Bernalillo County, New Mexico** – The County Commission voted to ban the use of Roundup on county properties by 2020.
- **Las Cruces, New Mexico** – The Las Cruces City Council voted to ban Roundup and its principal ingredient, glyphosate, for pest control on city property. The ban is scheduled to take effect once the city's glyphosate supply is exhausted.
- **Taos County, New Mexico** – Taos County Commissioners are considering the possibility of banning all pesticides, including glyphosate.

New Jersey

New Jersey has State and local ordinances encouraging Integrated Pest Management programs to eliminate or drastically reduce the use of pesticides. At least 15 city school districts and over a dozen other parks and recreation departments in the state have enacted IPM programs.

New York

In January of 2019, New York State Senator Brad Hoylman (27th District) sponsored a bill in the New York State Senate that would prohibit the sale and distribution of products containing glyphosate. Updates on the legislation can be found here.

In April of 2019, two New York City council members introduced legislation to ban glyphosate use in parks and other public spaces.

New York Park and Recreation Department has measures to eliminate or reduce pesticide and herbicide use in areas under its control.

- **New Paltz, New York** – The use of toxic pesticides and herbicides by city employees or by private contractors is forbidden on all city-owned lands.
- **Rockland County, New York** – Created a Non-Toxic Pesticide program, mandating the use of natural, non-toxic, or as a last resort with prior approval, the least toxic pesticide use.
- **Westchester County, New York** – Enacted a law for pesticide-free parks.

North Carolina

- **Carrboro, North Carolina** – [The city of Carrboro has restricted glyphosate use since 1999](#). Under the terms of the ban, glyphosate cannot be sprayed in public parks, schools and town buildings or properties. The city will only allow glyphosate to be sprayed under limited circumstances.

Ohio

- **Cuyahoga County, Ohio** – [Local ordinance prohibits](#) the use of pesticides on county-owned land, and established the adoption of an Integrated Pest Management program for county-owned properties.
- **South Euclid, Ohio** – [Passed ordinance](#) prohibiting toxic pesticides on public grounds in favor of alternative, organic pest control methods unless permitted by an Environmental Review Board.

Oregon

- **Eugene, Oregon** – [City put a moratorium on the use of weed killers containing glyphosate on city properties](#).
- **Portland, Oregon** – Since 1988, Portland has restricted the use of Roundup to emergency use only. [Glyphosate is banned on all city-owned property](#).

Texas

- **Austin, Texas** – [City Council voted to prohibit the spraying of glyphosate on city lands](#).
- **Denton, Texas** – City Council voted to implement an integrated pest management program and [restrict the use of glyphosate](#) on city parks, fields and playgrounds.

Vermont

Multiple bills containing restrictions or bans on glyphosate have been introduced in the legislature.

[Representative Mari Cordes introduced H. 301, which would ban the sale, use or application of the herbicide glyphosate](#).

Representative Annmarie Christensen introduced H. 328, an act relating to the use of glyphosate herbicide.

Virginia

- **Charlottesville, Virginia** – [Restricts the use of glyphosate on any city-owned parks, schools, or buildings](#). Glyphosate can only be sprayed under limited circumstances.

Washington

- **King County, Washington** – [Passed municipal ordinance](#) initiating an Integrative Pest Management (IPM) program to determine if and how pesticides should be used.
- **Kitsap County, Washington** – Passed measure [banning the spraying of glyphosate](#) by workers on county-owned and maintained properties. Glyphosate may only be used on noxious weeds as a tool of last resort.
- **Olympia, Washington** – [City passed a resolution](#) to encourage the implementation of an Integrative Pest Management (IPM) program for non-chemical pest control.

- **Thurston County, Washington** –[Passed municipal ordinance](#) to restrict the use of toxic pesticides on public property.

As always

Best Regards

Meagan Braganca
443.739.5598

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO COMPEL DEPOSITION OF
JESS ROWLAND**

Date: February 27, 2017

Time: 2:00pm

Ctrm: 4, 17th floor

Hon. Vince Chhabria

This document relates to:

ALL ACTIONS

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL
DEPOSITION OF JESS ROWLAND**

Introduction

Plaintiffs respectfully submit this reply brief in support of their Motion to Compel the Deposition of Jess Rowland, a private citizen who formerly served as Monsanto's chief "friend" within the EPA, and left EPA mysteriously within days of an "inadvertent" leak and subsequent retraction of an EPA draft report on the safety of glyphosate, that bore Mr. Rowland's signature.

It is not clear whether EPA has substantive opposition to this Motion; the opposition addresses only perceived procedural defects. As explained below, there were no procedural defects in connection with the request to depose Mr. Rowland.¹ Moreover, and of greater importance, it would benefit EPA, and the public as a whole, to learn about a former EPA employee's biases and misconduct and deter such conduct in the future. Further, the Plaintiffs have a pressing need for Mr. Rowland's testimony to confirm his relationship with Monsanto and EPA's substantial role in protecting the Defendant's business, efforts subsequently embodied in government reports consistently cited by Monsanto in this Court and elsewhere.

Importance of Discovery Sought

As stated in the original Motion, the circumstances underlying the relationship between Mr. Rowland and Monsanto are highly suspicious. The exhibits to the original Motion remain under seal, and Plaintiffs will not complicate the record, particularly in light of the Court's comments on sealing, by adding further exhibits under seal here; but Monsanto's production is replete with internal communication emphasizing an emergent need for the EPA Office of Pesticide Programs to release its report as quickly as possible. The unreleased report is mentioned repeatedly in the context of ensuring it is released in time to preempt other potential

¹ If the Court finds that there were procedural defects, Plaintiffs will correct those defects immediately but contend that such corrections should not delay adjudication of the merits of this motion.

actions or inquiries about the dangers of glyphosate. Similarly troubling is that Monsanto knew in advance of it being leaked that the report would be favorable. The document production is also replete, well beyond the exhibits attached to the Motion, with references to in-person meetings with “Jess” and text messages between Rowland and Monsanto employees, showing Rowland straining, and often breaking, ethics and rules to benefit Monsanto’s business.

Marion Copley, D.V.M., a 30-year career EPA scientist and recipient of numerous awards, wrote a letter to Mr. Rowland in March 2013, two years before the public debate about the carcinogenicity of glyphosate began in earnest. Dr. Copley was a senior toxicologist in the EPA’s Health Effects Division, and she worked closely with Mr. Rowland. Diagnosed with terminal cancer, she had to retire for health reasons and passed away in January 2014. Before her death, she voiced her serious concerns to Mr. Rowland about his and EPA’s handling of glyphosate.

Dr. Copley’s dying declaration begins by naming no fewer than fourteen effects of glyphosate known to EPA, all of which are plausible mechanisms of action explaining the increase in lymphoma risk. See Letter dated March 24, 2013 from Dr. Copley to Jess Roland, Exhibit 1. As Dr. Copley notes, “any one of these mechanisms alone listed can cause tumors, but glyphosate causes all of them simultaneously.” *Id.* Dr. Copley noted that glyphosate was previously classified by EPA as a “possible human carcinogen,” and argued that, in accordance with EPA’s knowledge about the chemical, EPA should classify glyphosate as a “probable human carcinogen.” *Id.* Unfortunately, Dr. Copley died less than a year later and before IARC, the following year, reached this very conclusion.

Dr. Copley’s letter points at corruption within EPA; she asks that Mr. Rowland consider her scientific assertions rather than “play your political conniving games with the science to favor

the registrants [pesticide manufacturers].” Dr. Copley confronts Mr. Rowland with allegations that he and Anna Lowit, who still works at EPA, “intimidated staff on CARC and changed HIARC and HASPOC final reports to favor industry.” Dr. Copley’s letter closes with an additional accusation toward Ms. Lowit: **“If anyone in OPP is taking bribes, it is her.”** She requests that Mr. Rowland “for once do the right thing and don’t make decisions based on how it affects your bonus.”

Dr. Copley’s letter, discovered after the filing of this Motion, substantiates many of Plaintiffs’ suspicions regarding EPA’s improper relationship with Monsanto. It highlights the need to take the testimony of Mr. Rowland on these issues now. Plaintiffs have explored the issues as much as they can with party witnesses; indeed, several witnesses acknowledge knowing Mr. Rowland but are unable (or unwilling) to provide any details of his relationship with Monsanto.

Dr. Copley’s dying request was that Mr. Rowland “for once do the right thing and don’t make decisions based on how it affects your bonus. You and Anna Lowit intimidated staff on CARC and changed HIARC and HASPOC final reports to favor industry.”

Service was Proper, Cured or Waived

Turning to the specific procedural defects cited by EPA in its opposition, Plaintiffs respectfully submit they are either inapplicable, have already been cured, or, at worst, would be grounds for a short continuance of this Motion to the next status conference.

EPA states that Plaintiffs have not properly served it with an “unredacted version of the Motion with Exhibits to the EPA” (Opp. at p.4). In fact, the motion and exhibits remain under seal because Defendant has not allowed Plaintiffs to provide an unredacted copy to the Department of Justice, despite Plaintiffs’ repeated requests. Plaintiffs are bound by the

protective order; they cannot provide the unredacted motion to the United States Attorney without violating that agreed order. At the January 27, 2017 status conference, on the subject of the sealing of this Motion, the Court stated:

And the parties, particularly companies, take a completely unreasonable view on what should be confidential and what material would cause them competitive harm. And so I just want to say at the outset, if I see a pattern of frivolous motions to seal, I will start sanctioning people. I'll start sanctioning parties and I will start sanctioning lawyers.

(Transcript at 7:5-10). The Court continued:

Regarding the motion to seal the materials connected to the Rowland deposition, I've reviewed them. It is very difficult for me to imagine a justification for sealing any of those materials; however, I will -- and I will say that often a company will file a motion to seal materials because the company perceives the material as embarrassing. I do not believe in the vast majority of cases that it is appropriate to seal material merely because it might be embarrassing to the company.

(Id. at 12:5-13). In light of the Court's remarks, Plaintiffs requested that Monsanto voluntarily agree the Motion may be unsealed; that request has been made no less than **five** times in the past two weeks. On February 6, 2016, counsel for Monsanto finally replied "We will let you know by COB tomorrow." Yet, as of this filing, no reply has been forthcoming.

Regarding formal service of the Motion on the United States, the government's arguments are belied by the record. The government did, in fact, contact Plaintiffs and objected to the timing and service of the motion, originally noticed for January 27, 2017. In response, the United States and Plaintiffs negotiated and entered into a Stipulation regarding the briefing and hearing; as noted in that document, entered by the Court (Docket No. 119), "Counsel for the government requested until February 8, 2017 to file a response and ... Plaintiffs' counsel agreed

to the request for additional time.... Plaintiffs and the United States have further agreed that, if necessary, a hearing on this Motion shall be held with this Court on February 22, 2017” (now continued by Court to February 27, 2017). Claims of defect in notice or service have been effectively waived by the joint stipulation.

All counsel registered for ECF in the Northern District of California consent to electronic service of all e-filed papers. *See e.g. E & J Gallo Winery v. Encana Energy Servs., Inc.*, No. CV-F-03-5412 AWILJO, 2005 WL 6408198, at *37 (E.D. Cal. July 5, 2005) (rejecting party’s argument that emailing a notice of deposition was improper where attorney was registered ECF user under analogous Eastern District of California rules.): <https://ecf.cand.uscourts.gov/cand/faq/general/service.htm>. Manual service is required only for unregistered counsel and pro se litigants. *Id.* Although Assistant U.S. Attorney Norris had not yet appeared in the case at time of service, she was a registered ECF user in the Northern District of California. To the extent that emailing the motion constituted improper service, the Court may still overlook the procedural defect and rule on the substance of the motion where the party acknowledges receipt of the email service and there is no prejudice.” *E&J Gallo* 2005 WL 6408198 at * 38. (Regarding the effects of e-mail service, “Defendants neither formally objected to Mr. Anderssen's February 17, 2005 deposition nor sought a protective order and such failure is commensurate to waiver of notice objections... the key issue is defense counsel's actions on February 16, 2005 to address Mr. Anderssen's deposition.”).

The Issue is Ripe for Decision

EPA also argues that the Touhy process has not been fully satisfied. This too is belied by the applicable law, as well as the specific dealings between the Plaintiffs and the EPA. The undersigned counsel complied fully with the applicable regulations, as directed by the EPA’s in-

house counsel. On October 4, 2016, Mark Stilp, Esq., counsel for EPA, provided counsel with the Touhy regulations and stated that additional information was needed “to make a decision and provide a response that properly follows the Agency’s ‘Touhy’ Regulations.” Mr. Stilp further stated “the Agency needs additional information and/or a formal written request **(OK to send by email)**”. See email chain between Timothy Litzenburg and Mark Stilp, attached as Exhibit 2. Now, four months later, the United States’ claim that Plaintiffs did not “formally” follow these regulations is wrong and indeed was waived by EPA’s attorney. *Id.*

Further, it is not required that a subpoena be served for this issue to be ripe for decision. The regulation at issue states “this subpart sets forth procedures to be followed when an EPA employee is requested **or subpoenaed to provide testimony**.” See Exhibit 2. Based on the regulation, coupled with the Agency’s negotiations with counsel in this instance, formal issuance and service of a subpoena was not required here. This is confirmed by the decision in *U.S. ex re. Lewis v. Walker*, 2009 WL 2611522 (M.D.Ga. 2009), where the District Court decided whether a “motion to compel [testimony by EPA employee] is improper because there is presently no pending federal subpoena as to [the witness.]” The court’s ruling was that, given that the EPA followed the “procedures that apply when an employee is subpoenaed” and “contends that the denial was a ‘final agency decision’”, there was no requirement for the issuance of a subpoena. According to the court, “the lack of a pending federal subpoena is not fatal to the present motion to compel.” *Id.* The relevant circumstances in this instance are identical. Nevertheless, at the time of this filing, a subpoena has been executed and is being served upon Mr. Rowland and EPA. See Exhibit 3.

The cases cited by EPA highlighting procedural defects are inapposite. In *Lopez v. Chertoff*, 2009 WL 1575209 (E.D.Cal. 2009), the Court denied a motion to compel because the

litigant had not stated “the nature and relevance of the official information sought,” an undisputed *sine qua non* of the Touhy regulations. In the instant case, the United States cannot credibly argue that the Plaintiffs failed to state the nature and relevance of the official information sought, nor any other requirement of its *Touhy* regulations.

No Separate Action Required nor Appropriate

Finally, EPA asserts that “it is well settled that the proper avenue for review of an agency action is through filing a separate APA action.” See Opposition at p.6. That is not accurate. For example, in *Lewis*, the court held that a direct APA action is only necessary when the court hearing the controversy does not have jurisdiction to compel the testimony, such as a state court action that seeks the testimony of employees of federal agencies. *Lewis* held that “the Court sees no reason why it cannot decide as part of the presently pending qui tam action whether the EPA properly declined to permit testimony of its employee.” In granting the motion to compel the agency’s employee’s testimony, the court explained that the EPA employee “likely possesses information that is relevant to [movant’s] claims.”

The subject is discussed exhaustively in *Ceroni v. 4Front Engineered Solutions, Inc.* (793 F.Supp.2d 1268)(D. Colorado 2011), the court held that a separate APA action is unnecessary and inappropriate when the request pertains to an existing federal action (citing *Watts v. Securities and Exchange Comm.*, 482 F.3d 501, 508 (D.C.Cir.2007); *Linder v. Calero–Portocarrero*, 251 F.3d 178, 181 (D.C.Cir.2001); *United States Environmental Protection Agency v. General Electric*, 197 F.3d 592, 599 (2d Cir.1999); *Johnson v. Folino*, 528 F.Supp.2d 548 (E.D.Penn.2007); all holding same).

Conclusion:

Plaintiffs have multiple bases to compel the testimony of Mr. Rowland, a former employee of the EPA who was subject to undue and untoward influence by Monsanto. Mr. Rowland operated under Monsanto's influence to cause EPA's position and publications to support Monsanto's business. Thus, and for all the foregoing reasons, Plaintiffs' Motion to Compel the Deposition of Jess Rowland should be granted.,

DATED: February 10, 2017

Respectfully submitted,

/s Robin Greenwald, Michael Miller and

Aimee Wagstaff

Robin Greenwald

rgreenwald@weitzlux.com

Weitz & Luxenberg

700 Broadway

New York NY 10003

Ph 212-558-5500

F 212-344-5461

Michael Miller

mmiller@millerfirmllc.com

The Miller Firm LLC

108 Railroad Ave

Orange VA 22960

Ph 540 672 4224

F 540 672 3055

Aimee H. Wagstaff

Aimee.wagstaff@andruswagstaff.com

Andrus Wagstaff, P.C.

7171 West Alaska Drive

Lakewood CO 80226

Ph 720-255-7623

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 10, 2017 I electronically filed this Opposition using the CM/ECF system which will send a notification of such filing to counsel of record.

/s/ Michael Miller

DECLARATION

I, Michael Miller, declare:

1. I am a member of of the executive committee of MDL 2741. I make this declaration in relation to Motion to Compel Deposition of Jess Rowland. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify thereto.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of February 2017

/s/ Michael Miller

Jess,

Since I left the Agency with cancer, I have studied the tumor process extensively and I have some mechanism comments which may be very valuable to CARC based on my decades of pathology experience. I'll pick one chemical to demonstrate my points.

Glyphosate was originally designed as a chelating agent and I strongly believe that is the identical process involved in its tumor formation, which is highly supported by the literature.

- Chelators inhibit apoptosis, the process by which our bodies kill tumor cells
- Chelators are endocrine disruptors, involved in tumorigenesis
- Glyphosate induces lymphocyte proliferation
- Glyphosate induces free radical formation
- Chelators inhibit free radical scavenging enzymes requiring Zn, Mn or Cu for activity (i.e. SODs)
- Chelators bind zinc, necessary for immune system function
- Glyphosate is genotoxic, a key cancer mechanism
- Chelators inhibit DNA repair enzymes requiring metal cofactors
- Chelators bind Ca, Zn, Mg, etc to make foods deficient for these essential nutrients
- Chelators bind calcium necessary for calcineurin-mediated immune response
- Chelators often damage the kidneys or pancreas, as glyphosate does, a mechanism to tumor formation
- Kidney/pancreas damage can lead to clinical chemistry changes to favor tumor growth
- Glyphosate kills bacteria in the gut and the gastrointestinal system is 80% of the immune system
- Chelators suppress the immune system making the body susceptible to tumors

Previously, CARC concluded that glyphosate was a "possible human carcinogen". The kidney pathology in the animal studies would lead to tumors with other mechanisms listed above. Any one of these mechanisms alone listed can cause tumors, but glyphosate causes all of them simultaneously. It is essentially certain that glyphosate causes cancer. With all of the evidence listed above, the CARC category should be changed to "probable human carcinogen". Blood cells are most exposed to chelators, if any study shows proliferation of lymphocytes, then that is confirmatory that glyphosate is a carcinogen.

Jess, you and I have argued many times on CARC. You often argued about topics outside of your knowledge, which is unethical. Your trivial MS degree from 1971 Nebraska is far outdated, thus CARC science is 10 years behind the literature in mechanisms. For once in your life, listen to me and don't play your political conniving games with the science to favor the registrants. For once do the right thing and don't make decisions based on how it affects your bonus. You and Anna Lowit intimidated staff on CARC and changed HIARC and HASPOC final reports to favor industry. Chelators clearly disrupt calcium signaling, a key signaling pathway in all cells and mediates tumor progression. Greg Ackerman is supposed to be our expert on mechanisms, but he never mentioned any of these concepts at CARC and when I tried to discuss it with him he put me off. Is Greg playing your political games as well, incompetent or does he have some conflict of interest of some kind? Your Nebraska colleague took industry funding, he clearly has a conflict of interest. Just promise me not to ever let Anna on the CARC committee, her decisions don't make rational sense. If anyone in OPP is taking bribes, it is her.

I have cancer and I don't want these serious issues in HED to go unaddressed before I go to my grave. I have done my duty.

Marion Copley
March 4, 2013

Timothy Litzenburg

From: Stilp, Mark <Stilp.Mark@epa.gov>
Sent: Tuesday, October 04, 2016 3:20 PM
To: Timothy Litzenburg
Subject: Testimony from EPA / Jess Rowland

Timothy-

After sending an email to you this morning, I re-reviewed your original request (pasting below) and determined that the Agency needs additional information and/or a formal written request (OK to send by email) from you before making a decision and providing a formal response.

To make a decision and provide a response that properly follows the Agency's "Touhy" Regulations (also pasting below), the Agency needs information such as:

- Name, case number, jurisdiction etc. of underlying case(s),
- Form of testimony being requested (discovery depo vs. trial depo? in person?),
- Proposed date, time, location and duration of depo
- Subject matter/scope of depo, and (as noted in the email I sent to you this morning),
- Explanation as to why voluntarily participating in the depo is clearly in EPA's interest.

Please feel free to give me a call with any questions or concerns. Thanks.

-Mark Stilp

Mark Stilp | Attorney-Adviser | Office of General Counsel | U.S. Environmental Protection Agency | 1200 Pennsylvania Ave. NW | Washington, DC 20460 | mail code: 2377A | office: 202.564.4845 | cell: 202.839.1889

Your Original Request:

From: Timothy Litzenburg <TLitzenburg@MillerFirmLLC.com>
Date: August 10, 2016 at 2:58:01 PM EDT
To: "'blake.wendy@epa.gov'" <blake.wendy@epa.gov>
Cc: Jeffrey Travers <JTravers@millerfirmllc.com>
Subject: Deposition of Jess Rowland

Ms. Blake,

Good afternoon. I represent about a thousand people with non Hodgkin lymphoma which developed after exposure to Monsanto's Roundup. You are surely aware of the "accidental" release of the "final" report by CARC on this chemical earlier in the year, and Jess Rowland's retirement from EPA several days after that. We need to take the deposition of Mr. Rowland regarding the particulars of his relationship with Monsanto and his work on this chemical. Please secure for us the necessary permissions, so we can do this quietly and at a convenient time and location; I believe the deposition will happen regardless, but would prefer we do it by agreement, thanks.

Timothy

EPA Regulations:

§ 2.401 Scope and purpose.

This subpart sets forth procedures to be followed when an EPA employee is requested or subpoenaed to provide testimony concerning information acquired in the course of performing official duties or because of the employee's official status. (In such cases, employees must state for the record that their testimony does not necessarily represent the official position of EPA. If they are called to state the official position of EPA, they should ascertain that position before appearing.) These procedures also apply to subpoenas duces tecum for any document in the possession of EPA and to requests for certification of copies of documents.

(a) These procedures apply to:

- (1) State court proceedings (including grand jury proceedings);
- (2) Federal civil proceedings, except where the United States, EPA or another Federal agency is a party; and
- (3) State and local legislative and administrative proceedings.

(b) These procedures do not apply:

- (1) To matters which are not related to EPA;
 - (2) To Congressional requests or subpoenas for testimony or documents;
 - (3) Where employees provide expert witness services as approved outside activities in accordance with 40 CFR part 3, subpart E (in such cases, employees must state for the record that the testimony represents their own views and does not necessarily represent the official position of EPA);
 - (4) Where employees voluntarily testify as private citizens with respect to environmental matters (in such cases, employees must state for the record that the testimony represents their own views and does not necessarily represent the official position of EPA).
- (c) The purpose of this subpart is to ensure that employees' official time is used only for official purposes, to maintain the impartiality of EPA among private litigants, to ensure that public funds are not used for private purposes and to establish procedures for approving testimony or production of documents when clearly in the interests of EPA.

§ 2.402 Policy on presentation of testimony and production of documents.

(a) With the approval of the cognizant Assistant Administrator, Office Director, Staff Office Director or Regional Administrator or his designee, EPA employees (as defined in 40 CFR 3.102 (a) and (b)) may testify at the request of another Federal agency, or, where it is in the interests of EPA, at the request of a State or local government or State legislative committee.

(b) Except as permitted by paragraph (a) of this section, no EPA employee may provide testimony or produce documents in any proceeding to which this subpart applies concerning information acquired in the course of performing official duties or because of the employee's official relationship with EPA, unless authorized by the General Counsel or his designee under §§ 2.403 through 2.406.

§ 2.403 Procedures when voluntary testimony is requested.

A request for testimony by an EPA employee under § 2.402(b) must be in writing and must state the nature of the requested testimony and the reasons why the testimony would be in the interests of EPA. Such requests are immediately sent to the General Counsel or his designee (or, in the case of employees in the Office of Inspector General, the Inspector General or his designee) with the recommendations of the employee's supervisors. The General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator, or Staff Office Director (or, in the case of employees in the Office of Inspector General, the Inspector General or his designee),

determines whether compliance with the request would clearly be in the interests of EPA and responds as soon as practicable.

§ 2.404 Procedures when an employee is subpoenaed.

(a) Copies of subpoenas must immediately be sent to the General Counsel or his designee with the recommendations of the employee's supervisors. The General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator or Staff Office Director, determines whether compliance with the subpoena would clearly be in the interests of EPA and responds as soon as practicable.

(b) If the General Counsel or his designee denies approval to comply with the subpoena, or if he has not acted by the return date, the employee must appear at the stated time and place (unless advised by the General Counsel or his designee that the subpoena was not validly issued or served or that the subpoena has been withdrawn), produce a copy of these regulations and respectfully refuse to provide any testimony or produce any documents. United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

(c) Where employees in the Office of Inspector General are subpoenaed, the Inspector General or his designee makes the determination under paragraphs (a) and (b) of this section in consultation with the General Counsel.

(d) The General Counsel will request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Agency and the employee.

§ 2.405 Subpoenas duces tecum.

Subpoenas duces tecum for documents or other materials are treated the same as subpoenas for testimony. Unless the General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator or Staff Office Director (or, as to employees in the Office of Inspector General, the Inspector General) determines that compliance with the subpoena is clearly in the interests of EPA, the employee must appear at the stated time and place (unless advised by the General Counsel or his designee that the subpoena was not validly issued or served or that the subpoena has been withdrawn) and respectfully refuse to produce the subpoenaed materials. However, where a subpoena duces tecum is essentially a written request for documents, the requested documents will be provided or denied in accordance with subparts A and B of this part where approval to respond to the subpoena has not been granted.

§ 2.406 Requests for authenticated copies of EPA documents.

Requests for authenticated copies of EPA documents for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure will be granted for documents which would otherwise be released pursuant to subpart A. For purposes of Rule 44 the person having legal custody of the record is the cognizant Assistant Administrator, Regional Administrator, Staff Office Director or Office Director or his designee. The advice of the Office of General Counsel should be obtained concerning the proper form of authentication.

Mark Stilp | Attorney-Adviser | Office of General Counsel | U.S. Environmental Protection Agency | 1200 Pennsylvania Ave. NW | Washington, DC 20460 | mail code: 2377A | office: 202.564.4845 | cell: 202.839.1889

From: Stilp, Mark
Sent: Tuesday, October 04, 2016 10:02 AM
To: 'TLitzenburg@millerfirmllc.com' <TLitzenburg@millerfirmllc.com>
Subject: Voicemail follow up regarding Jess Rowland Testimony

Hi Timothy-

I received a voicemail from you a few weeks ago about your request for testimony from former EPA employee Jess Rowland. I apologize for the delay in getting back to you. I was out of the country the past two weeks.

I continue to work on getting a response to your request.

When we spoke on the phone, you explained why, in your opinion, this testimony would be in the Agency's best interest. Will you respond to this email and put that explanation in writing for me?

Thanks.

-Mark Stilp

Mark Stilp | Attorney-Adviser | Office of General Counsel | U.S. Environmental Protection Agency | 1200 Pennsylvania Ave. NW | Washington, DC 20460 | mail code: 2377A | office: 202.564.4845 | cell: 202.839.1889

Total Control Panel

[Login](#)

To: tlitzenburg@millerfirmllc.com

Message Score: 15

High (60): **Pass**

From: stilp.mark@epa.gov

My Spam Blocking Level: Medium

Medium (75): **Pass**

Low (90): **Pass**

[Block](#) this sender

[Block](#) epa.gov

This message was delivered because the content filter score did not exceed your filter level.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT
for the
Northern District of California

In Re: Roundup Products Liability Litigation)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 3:16-md-02741-VC
Monsanto Company)	
<i>Defendant</i>)	

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Jesudoss Rowland

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
See Attachment A

Place: The Hotel At Arundel Preserve 7795 Arundel Mills Blvd, Hanover, MD 21076	Date and Time: 03/28/2017 9:00 am
--	--------------------------------------

The deposition will be recorded by this method: videotaped and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Attachment A.

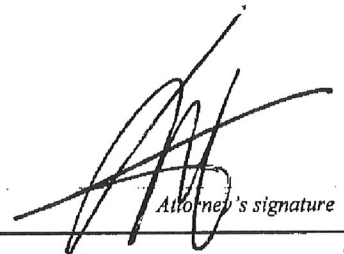
The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/10/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs
in this Multi-District Litigation _____, who issues or requests this subpoena, are:

Michael J. Miller, 108 Railroad Avenue, Orange, VA 22960, mmiller@millerfirmllc.com, 540-672-4224

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 3:16-md-02741-VC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ 40.58.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS LIABILITY LITIGATION	MDL No. 2741 Case No. 16-md-02741-VC
This document relates to all cases	Subpoena for Jesudoss Rowland Attachment A.

ATTACHMENT A TO SUBPOENA FOR JESUDOSS ROWLAND

The Deposition Will Cover the Following Topics:

1. Mr. Rowland's time on the Cancer Assessment Review Committee within the EPA's Office of Pesticide Programs (OPP), focusing generally on Communications with Monsanto employees, Monsanto ex-employees, lobbyists, or other agents or contractors (including trade groups to which Monsanto belongs), whether written, verbal or in person.
2. Mr. Rowland's contacts with anyone at the Agency for Toxic Substances and Diseases Registry, the National Toxicology Program, or the EPA's office of Research and Development concerning glyphosate.
3. Mr. Rowland's contacts with anyone involved in the IARC meetings or monograph concerning glyphosate
4. Mr. Rowland's involvement with the creation of the CARC glyphosate memo on carcinogenicity dated October 1, 2015 and the circumstances around the 'inadvertent release' and subsequent retraction of that report in or around April and May 2016.
5. Mr. Rowland's departure from EPA in or around May 2016 and subsequent activities working for or communicating with the chemical industry.

Request for Production of Documents:

The Plaintiffs request that seven days prior to the deposition, Mr. Rowland provide documents relating to the five deposition topics listed above that are in Mr. Rowland's personal files and were created or received outside of official EPA channels, including but not limited to emails, notes, memos, audio recordings, video recordings, text messages, instant messaging, and letters

Plaintiffs request documents reflecting payments from the chemical industry to Mr. Rowland or his immediate family members.

Plaintiffs request the production of the following emails. Email dated July 14, 2016 sent to Jack Housenger entitle “FQPA Violations in OPP;” and Email dated May 18, 2015 titled “FQPA or Misconduct” sent to Bill Jordan and Stephen Dapson.

Sayers, Margery

From: Keith Ohlinger <kohlinger05@verizon.net>
Sent: Saturday, October 26, 2019 9:11 AM
To: CouncilMail
Cc: kohlinger05@verizon.net
Subject: CB 51-2019 Testimony Opposed.
Attachments: CB 51-2019 Testimony Keith Ohlinger.docx

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear County Council:

I have attached my written testimony to this email. Below are the links to the reports that I referenced in my written and verbal testimony before the Council on Monday night regarding CB 51 and CB 55:

This is the 2017 Howard County Profile, the farm numbers are lower in 2019 but this gives you the basics:

https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Maryland/cp24027.pdf

This is the bulletin that gives the specifics on Maryland and specifically, Howard County farms in 1900:

<ftp://ftp.census.gov/library/publications/decennial/1900/bulletins/agriculture/151-agriculture-md.pdf>

This shows the 1954 Ag Census numbers by Maryland County:

<http://usda.mannlib.cornell.edu/usda/AgCensusImages/1954/01/23/1166/Table-01.pdf>

Have a good weekend!

Keith Ohlinger
Porch View Farm LLC
Cell # 240-893-1718

CB 51-2019 Opposed

26 October 2019

Keith Ohlinger
2790 Florence Road
Woodbine, MD 21797

Dear Howard County Council:

Please accept this as my written testimony on CB 51-2019. While I currently oppose the bill I am not opposed to the concept, I believe we are very close to a bill/policy that I could support with a few tweaks that I will explain here. I am making this testimony as a private citizen.

Most of the Council members and many of your staff have been to my farm so you know that I add native wild flower and grass mix to all our pastures when we seed. Our native tree plantings act as wildlife buffer strips and are bursting with pollinators in season. I strongly support pollinators and pollinator habitat as a Lifetime member of the Maryland State Beekeepers Association. As a farmer who practices without the chemicals discussed in the bill, I hope you grasp the seriousness of the situation when I caution the County that it is extremely difficult to do what they are intending. The National Resources Conservation Service (NRCS) for Maryland held a training session for their planners at our farm last year. Last month the University of Maryland Extension and Future Harvest/Chesapeake Alliance for Sustainable Agriculture held a training program at our farm. I am a well-respected resource in the Country regarding Regenerative Farming.

The essence of Integrated Pest Management (IPM) is doing everything possible to avoid the use of the strongest tool until it is absolutely necessary and when it becomes necessary to use the tool but to rotate among the tools available to avoid resistance in the pest(s). If I was developing an IPM policy for the County, my first step would have been to reach out to the University of Maryland (UMD) to ask for the latest research on the topic. I would have reached out to the farmers of the County for their input since their livelihoods depend on their ability to harvest a crop. Unfortunately in speaking to the experts at UMD, they were not consulted. I explained in my verbal testimony that the farmers were not consulted either. For my part, I certainly was not trying to embarrass the administration; I would have brought my concerns to their attention sooner had we had that opportunity. Mr. Feldmark did ask several of the farmers into the hall during the hearing to apologize for not reaching out and I believe he was honest, sincere, and that it was not intentional.

My concerns with the bill mainly center on the policy it references. The section: "Definitions (a)2.(e)... never a blanket spray application." would seem to exclude the use of glyphosate for kill down of a cover crop as it is used in a blanket application and cover crops provide a huge benefit in reaching the County's WIP goals for 2025. In talking with James Zoller at the Howard Soil Conservation District meeting on October 24th, it sounds as though the County is going to add something to the policy like "except on an agricultural lease." I believe that clarification in the policy will address my concerns, and thank them for their efforts and clarification.

I think the annual pesticide use report for the "past two years" requirement for agricultural leases is onerous and unnecessary as they are all licensed professionals already working under existing Federal and State regulations. James Zoller stated that this was already the requirement for farmers leasing agricultural land from the County but the County only asked for it the first year but not consistently since. He thought the request was due to liability issues. I ask that the report be given on an as

requested basis instead of required yearly. As farmers we have had so many "simple requests" added on to our work load over the years that we spend as much time reporting as we do actually farming. Making it "as requested" allows the County to get the information if they need it and doesn't burden the farmer by adding an unnecessary report to their workload. I think it is a fair compromise and solution.

I serve on the Board of Directors for the Maryland Forests Association and while I am not representing them in this testimony I am concerned that banning Chlorpyrifos on County land will leave the land managers without a valuable tool should they need it for a pest outbreak in County forests. However I am willing to cede that specific argument. I do believe the agriculturally leased land SHOULD be exempted from the Chlorpyrifos ban. I can understand the County stating that much of what they do is ornamental so applying these chemical is not necessary. This is not the case for farmers or in the spirit of IPM.

I testified on the drop in the number of farmers and farms on Monday night. In the 1900 Ag Census there were 1214 farms in Howard County, the latest numbers from Kathy Johnson at HCEDA are 300 farms. The land farmed in 1900 was 146,039 acres and as of 2017 there was 32,436 acres farmed in the County with 22,349 of it preserved. The ability of a farmer to rent land from the County is a huge benefit. The County receives rent payments and does not have to spend funds on maintenance; the farmer can expand at a far lesser cost than if they had to buy acreage. A 61.5 acre farm sold down the street from me for \$1.9 million. There is no crop or animal that I can raise to be able to afford land that expensive. Some of the Ag leases are for 25 years which is more than enough time to establish tree crops on County land. The mill closing in Ellicott City makes me concerned that our local farmers will not be able to profitably market grain crops in the future. As we learned during the farm tour the mill closing is expected to lose the farmers about 50 cents a bushel. Another farmer said that his normal round trip was 32 miles before but will now be 241 to go to the mill in PA.

Direct farm sales to the consumer are one of the ways farms can survive and the consumers want fruits and vegetables. I believe many farmers will have to make the switch and having County land available for lease is important for their survival. If we eliminate the farmers ability to protect against borer insects they will not be able to use County land for tree crops and it puts them at a disadvantage. These are trained professionals using a product as labeled to protect their livelihood; I would remove the ban on Chlorpyrifos on agricultural leases.

The policy indicates that there is a potential for County Agencies to use glyphosate and neonicotinoids outside the restrictions if requested in writing to the Director of Recreation and Parks or the Director of Public Works however there is no mandated time limit for a response. As we know the spread of certain insect pests can reach critical mass in just hours to days if not dealt with immediately. Therefore I recommend a mandated absolute 3 hour response time, yes or no, when a request is made regardless of weekends, holidays, or vacations. Make someone responsible for answering and stick to that time so County land managers can respond to emergency pest issues in a timely manner. If no response is received then the staff can go ahead with the emergency application.

Thank you for your consideration in this matter, please feel free to contact me with any questions.

Very Truly Yours,

Keith Ohlinger

Sayers, Margery

From: Chiara D'Amore <cdamore@communityecologyinstitute.org>
Sent: Tuesday, October 22, 2019 12:48 PM
To: CouncilMail
Subject: supports CB-51

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Members of the Howard County Council:

The Community Ecology Institute (CEI) supports CB-51. This important bill shows leadership in the restricted use of certain pesticides and an herbicide on County property. Chlorpyrifos and neonicotinoids are both toxic to a variety of wildlife and harmful to humans.

Chlorpyrifos belongs to the same class of chemicals as sarin gas and is essentially a nerve agent, attacking chemical pathways and causing a breakdown in the ability of nerves to communicate. You can be exposed to it by inhaling it, eating it, or getting it on your skin. The effects of the insecticide on animals and humans has been widely studied since the 1970s. According to the studies, chlorpyrifos affects living things to various degrees: It's very toxic to birds and insects, including bees, quite toxic to fish, and moderately toxic to humans. However, more recent studies of small children have found a link between chlorpyrifos and lower IQ and developmental problems, according to the Pesticide Action Network.

While public attention has recently focused on the threat to honey bees and bumble bees from neonicotinoid (neonic) pesticides, there is growing evidence that people may also be at risk from these pervasive chemicals. For example laboratory tests with cell cultures and rodents led the European Food Safety Authority (EFSA) to categorize two neonics as possibly impairing the developing human nervous system. The emerging science suggesting that neonic pesticides pose a health risk to people, coupled with its contamination of waterways and food, raises an alarm beyond the already significant risk to bees. While more study is needed on the potential human health risks, the widespread use of these agrochemicals is certainly imprudent and potentially disastrous.

The CB-51 bill will help to significantly lower the use of both substances in Howard County, to the benefit of the health of humans, birds, pollinators, and other wildlife and also benefiting water quality. As a Howard County based non-profit focused on fostering healthier communities for both people and the environment we the Community Ecology Institute asks you to please consider supporting CB-51.

Thank you,

Chiara

Chiara D'Amore, Ph.D.
Executive Director, [The Community Ecology Institute](#)
Director, [Columbia Families in Nature](#)

Sayers, Margery

From: Carolyn Parsa <carolyn.parsa@mdsierra.org>
Sent: Tuesday, October 22, 2019 8:59 AM
To: Rigby, Christiana
Cc: CouncilMail; Ball, Calvin
Subject: Testimony - CB-51 Support
Attachments: CB51.2019 with ASCM.docx

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

County Council Chair Rigby,

The Sierra Club is very excited about the introduction of Howard County's new pesticide policy. Together with becoming a Bee City, is one important step towards saving pollinators.

We are looking forward to the implementation of the plan along with the pollinator committee and glad to know that the annual pesticide use reports will be available online for increased transparency to the public.

Please find the attached testimony from the Howard County Sierra Club with the additional sign on from the Audubon Society of Central Maryland.

Thank you for your work on this bill and policy.

--

Carolyn Parsa
Sierra Club Howard County Chair

October 21, 2018

Howard County Council Members:

RE: Support of CB-51

The Howard County Sierra Club is asking that you vote yes for CB-51 which will place restrictions and accountability on the use of chlorpyrifos, neonicotinoids, and glyphosate on Howard County controlled, managed or owned buildings and grounds.

Reducing pesticides is an important step towards our goal of sustainable and healthy living in Howard County. These pesticides have been shown to pose a serious threat to human health and wildlife. We must protect those people who apply the chemicals, and the people and pets who use the grounds where pesticides have been applied. Children and pets can be especially vulnerable to pesticide exposure because of their size, metabolism and how they play with extra contact to the grassy fields.

Less toxic alternatives including changing the mowing schedules and land management practices have been shown to work in other jurisdictions in Maryland that have taken on similar pesticide use policies. These practices not only work, but can decrease in cost over time, so that they cost less than the previous plans which used more pesticides.

It is very important to implement these changes for the sustainability of our lands. Pesticides are designed to kill, and when they applied to the ground, we must be aware that they don't stay where we put them. They flow into the waterways and down into the soil, continuing to have toxic effects as they travel. Pesticides have been found in groundwater, streams and rivers and lakes. People and wildlife rely on these water sources for survival. It doesn't make sense to poison them.

Reducing the use of pesticide on Howard County owned or managed land is a great start, and we look forward to this serving as a model to continue this movement forward. The county can be a great example to follow. We would encourage cooperation with the Howard County School System to help them to implement a similar pesticide reduction plan in the future.

Please support CB-51.

Carolyn Parsa
Howard County Sierra Club Chair

Additional partner sign on:



Audubon Society
of CENTRAL MARYLAND

Sayers, Margery

From: Jones, Opel
Sent: Monday, October 21, 2019 8:08 PM
To: Sayers, Margery
Subject: FW: County Council Bill -51 Restricting Pesticide Use on County Property

-----Original Message-----

From: Shelley VHJ <shelleyvhj@gmail.com>
Sent: Monday, October 21, 2019 2:00 PM
To: Jones, Opel <ojones@howardcountymd.gov>
Subject: County Council Bill -51 Restricting Pesticide Use on County Property

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Mr. Jones,
Please vote in favor of the bill to restrict specific pesticide use on county owned property, in order to protect our water and our pollinators.
Thank you,
Shelley Von Hagen-Jamar
9213 Osprey Court
Columbia,
MD 21045