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21 November 2011

Health Canada ordered to examine impact of Monsanto's Roundup on amphibians

Vancouver. The Honourable Mr. Justice Kelen of the Federal Court of Canada has ordered Health Canada to take a second look at the impacts on amphibians of Glyphosate-based pesticides – one of the most widely-used pesticides in Canada, which includes products like Monsanto's Roundup®. The decision, the result of an action brought by Smithers-based pesticide-activist and French-trained Paediatrician, Josette Wier, demonstrates that Health Canada must address requests by the public for a review of the safety of a pesticide where there is scientific uncertainty about its risks.

“Understanding the impact of pesticides on frogs and other amphibians is critical to understanding their impacts on the broader ecosystem,” explained Wier. “There are many recent studies showing that Round-up and many other Glyphosate-based pesticides contain an ingredient known as POEA that is toxic to amphibians and perhaps also to humans and human embryos, but Health Canada refused to initiate a formal review of the safety of these pesticides.”

Wier's legal challenge, brought by Vancouver-lawyer, Jason Gratl, and funded by West Coast Environmental Law and the Driftwood Foundation, focused on wetlands that provide critical habitat for many species of frogs and amphibians. Judge Michael Kelen wrote: “[Ms. Wier] is entitled to a proper analysis as to whether the pesticide in issue presents an environmental risk to amphibians inhabiting ephemeral wetlands [those that are sometimes dry] which are subject to the aerial spraying of the pesticide in silviculture.”

“Health Canada knew that there were risks with these pesticides, and yet failed to act to protect amphibian species, many of which are endangered.” said Wier. “The judge affirmed that Health Canada should take a precautionary approach – and re-examine their approval of pesticides where scientists don't agree on the risks.”

“It's absurd that Josette had to go to court to force Health Canada to consider the environmental risks of substances that BC government scientists have flagged as posing a major risk to frogs and other amphibians,” said Andrew Gage, staff lawyer with West Coast Environmental Law. “This decision empowers the public to demand that pesticides be re-examined when science casts doubt on their safety and shows Health Canada that it must take such demands seriously.”

Wier brought her original request for a special review of glyphosate-pesticides (especially those containing POEA) and subsequent legal challenge because of her concern about possible aerial spraying of Monsanto's pesticide Vision in the forests near Smithers. Glyphosate products are widely used on lawns, forests and in agriculture across Canada.

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A copy of the Honourable Mr. Kelen's decision is available at: <http://cas-ncr-nter03.cas-satj.gc.ca/rss/T-1604-09%20decision%20ENG.pdf>

Excerpts from the November 21st decision of the Honourable Mr Justice Kelen in *Wier v. the Minister of Health*:

[paras 4-6] In a 29-page letter dated May 25, 2009, together with a binder of medical and scientific studies, the applicant (through her counsel) made a request to the Minister to initiate a “special review” of the registered pesticide glyphosate containing polyoxyethylene tallow amines (POEA) (the pesticide). ...

Glyphosate is a herbicide (a “weed-killer”) registered under the Act for many uses and in many locations, including killing weeds in forests which would otherwise smother re-plantings; in agriculture on food and fibre crops; in gardens for flowers and other ornamentals; and on turf or grass. This pesticide is one of the most popular and widely used pesticides. It was first registered for use in 1976 and sold under the trade name “Roundup”. As of 2009, there were 192 glyphosate-used products registered for a variety of uses in Canada.

POEA are formulants added to glyphosate products. They allow the glyphosate products to spread more evenly on the waxy surface of leaves. As of September 2009, there were 137 glyphosate products containing POEA registered for use in Canada....

[paras. 81-82] [Ms. Wier] relies upon the BC [Government] Literature Review which states in its Executive Summary...

...There is insufficient information on the levels of glyphosate contamination in small ephemeral wetlands, which are favoured habitats of amphibians, and which may be exposed to direct over spraying with herbicide under current use guidelines...

These ephemeral wetlands are transitory wetlands which come and go in the clear cut areas where the forest has been replanted. ... The concern raised by the BC Report is that there is insufficient information on the levels of this pesticide in these transitory wetlands which are used by frogs and salamanders. The BC Literature Review concludes that these knowledge gaps need to be addressed.

[para 92] [T]he Court can only conclude that the [Minister of Health] fettered her discretion under section 17 because a section 16 re-evaluation of the same environmental risks was planned. The Court concludes that the Minister erred in law by misinterpreting the mandatory wording of section 7 which requires that a “special review” be conducted regardless of whether a section 16 re-evaluation is planned or is underway.

[Para 98] Based on the record before the Court upon which this decision was made, there is conflicting evidence that the pesticide in issue presents an acceptable risk to amphibians in ephemeral wetlands which are aurally sprayed with the pesticide in silviculture. The briefing notes for the Science Operations Committee and the Science Management Committee and the draft letter all recognize that there is an uncertainty about whether the pesticide will harm amphibians in this environment. The Regulatory Agency recognizes that the pesticide is toxic to amphibians in bodies of water and for this reason the pesticide cannot be sprayed over or close to bodies of water. On the other hand, Dr. Delorme and an official at the Environmental Risk Directorate were of the opinion that the field studies done by the Canadian Forestry Service showed that there was no environmental risk to amphibians in ephemeral wetlands as a result of the pesticide. However, there were no reports of these field studies or any other documentary evidence in the record before the decision-maker in this case. Accordingly the Court finds that the Minister did err in interpreting the evidentiary threshold required to initiate a special review ...

[para. 101] With opinions within the Regulatory Agency on both sides of the question as to whether the pesticide presents an unacceptable environmental risk to amphibians in ephemeral

wetlands, the precautionary principle would require that the Minister initiate a special review into that issue.

[para. 105] In this case, there was evidence on both sides of the issue. The evidence relied upon by Dr. Delorme that the Canadian Forestry Service had done field studies which showed there was not an environmental risk to amphibians from this pesticide in ephemeral wetlands was not consistent with the briefing notes prepared by the scientists in the Regulatory Agency, was not consistent with the BC Literature Review and was not consistent with the recognition by the Minister that a reevaluation of the environmental risk of the pesticide to amphibians in ephemeral wetlands was necessary.

[para. 106] ... [T]he Court agrees with the applicant that the Minister's decision is not transparent or intelligible with respect to the narrow risk at issue before the Court, and that the evidence with respect to this risk is not properly documented in the record such that it could be relied upon as the basis for the decision.

[para. 107] ... The special review will be narrower than the comprehensive re-evaluation being conducted in the conjunction with the United States. For this reason, the special review will be targeted and possibly quicker. The applicant is entitled to a proper analysis as to whether the pesticide in issue presents an environmental risk to amphibians inhabiting ephemeral wetlands which are subject to the aerial spraying of the pesticide in silviculture.