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February 11, 2020

TO: The Honorable Paul Pinsky
Chair, Education, Health, and Environmental Affairs Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: SB 300 - Pesticides - Use of Chlorpyrifos – Prohibition (**SUPPORT**)

The Office of Attorney General urges this Committee to support SB 300. SB 300 would ban the use of chlorpyrifos in Maryland, including any insecticide containing chlorpyrifos. Despite clear evidence that chlorpyrifos poses a serious risk to public health—especially to infants, children, and pregnant women—chlorpyrifos is commonly used on food crops throughout the United States.¹ Chlorpyrifos is one of the most widely used insecticides in the United States. It is used on numerous food crops, including those consumed by infants and young children such as apples, strawberries, peaches, and grapes.² The Attorney General has become familiar with the dangers of chlorpyrifos through the work he has undertaken pursuant to the Maryland Defense Act, and strongly supports banning the use of this toxic pesticide in the State.

Chlorpyrifos acts by inhibiting an enzyme that is key to the proper development and functioning of the central nervous system and brain. It has been linked to autism, childhood cancers, ADHD and other neurodevelopmental issues for babies and children.³ Children in utero are especially at high risk of exposure, which is associated with adverse birth defects.⁴ The president of the American Academy of Pediatrics stated in a 2017 New York Times article that “exposures for babies are probably five times greater than its proposed “safe” intake, and 11 to 15 times higher for toddlers and older children,” and urged that the “chemical is unambiguously dangerous and should be banned from use.”⁵ Moreover, farmworkers who apply and mix the

¹ SMART ON PESTICIDES MARYLAND, IT'S TIME TO BAN CHLORPYRIFOS IN MARYLAND 1, http://www.mdpestnet.org/wp-content/uploads/2012/10/2019_MPN_ChlorpyrifosBan_FactSheet_01242019-RQ-NoBillNumber.pdf.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Fernando Stein, *A Pesticide and the E.P.A.*, N.Y. TIMES (Nov. 1, 2017), https://www.nytimes.com/2017/11/01/opinion/pesticide-epa.html?_r=0.

pesticide are at increased risk for breast cancer and reproductive health problems even with maximum personal protective equipment.⁶ In addition to these numerous health hazards to humans, the use of the pesticide is also a threat to the Chesapeake Bay, aquatic life, and bees and other pollinators.⁷

The public health dangers associated with the pesticide are well-documented. The U.S. Environmental Protection Agency's (EPA) own scientists have twice been unable to identify a safe level for the pesticide on food.⁸ After finding that it was unable to conclude that the risk from aggregate exposure to chlorpyrifos meets the applicable safety standard under Federal Food, Drug, and Cosmetic Act ("Food Act"), in November 2015 and again in November 2016, EPA issued proposed regulations to revoke all "tolerances" (i.e., permitted residues) for the pesticide in food.⁹

Despite EPA's certainty that it could not find the current chlorpyrifos food tolerances safe under the Food Act, one of the former EPA Administrator Scott Pruitt's first official acts was to change positions on the proposed regulations and deny an administrative petition brought by environmental groups to revoke the current tolerances for the pesticide on food. Disregarding decades of accumulated scientific evidence and citing "uncertainty" in chlorpyrifos' toxicity, then Administrator Pruitt instead issued an order putting off under October 2022, if not longer, any decision on whether to revoke or modify current food tolerances for the pesticide.

In reaction to this order, the Attorney General joined with other states and environmental and public health advocates in a legal action to challenge the EPA's failure to include the finding of safety required to maintain those tolerances. *See League of United Latin American Citizens v. Wheeler*, 899 F.3d 814 (9th Cir. 2018). The original decision was vacated, and was heard en banc by the Ninth Circuit.¹⁰ Upon re-hearing, the en banc court ordered the Environmental Protection Agency to issue, no later than 90 days after the filing of the order, a full and final decision on LULAC's objections pursuant.¹¹

Exactly 90 days after the court ordered a "full and final decision on LULAC's objections," the EPA complied and issued its Final Denial Order. *See Chlorpyrifos; Final Order Denying Objection to March 2017 Petition Denial Order*, 84 Fed. Reg. 35, 555 (July 24, 2019).¹² In its Final Denial Order, the EPA stated that "the data supporting objections to the use of [Chlorpyrifos] was 'not sufficiently valid, complete or reliable,'" and therefore, should not be banned. As a result, the Ninth Circuit granted the respondent's (EPA) motion to dismiss the complaint because the EPA's issuance of the Final Order mooted the petition for review.¹⁴ In

⁶ Smart on Pesticides Maryland, *The 2019 Maryland Chlorpyrifos Ban Bill*, <http://www.mdpestnet.org/take-action/smart-on-pesticides-maryland/> (last visited Feb. 8, 2019).

⁷ SMART ON PESTICIDES MARYLAND, *supra* note 1.

⁸ Environmental Protection Agency, Regulations.gov, *Chlorpyrifos Revised Human Health Risk Assessment* (Nov. 3, 2016), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2015-0653-0454>.

⁹ *Id.*

¹⁰ *League of United Latin Am. Citizens v. Wheeler*, 922 F.3d 433 (9th Cir. April 19, 2019).

¹¹ *Id.*

¹² Final Order Denying Objection to March 2017 Petition Denial Order, 84 Fed. Reg. 35, 555 (July 24, 2019).

¹³ *Id.* at 35562.

¹⁴ *League of United Latin Am. Citizens v. Wheeler*, 940 F.3d 1126 (9th Cir., Oct. 16, 2019).

addition, Petitioner's Cross-Motion for leave to amend, as well as the Intervenor's Motion to Consolidate were denied as moot.¹⁵

In the face of such delay and inaction on the federal level, as well as the EPA's rejection of numerous studies that indicate the negative effects of chlorpyrifos, it is imperative that Maryland act now on a state level to safeguard against the harmful effects of exposure to chlorpyrifos. SB 300 would help protect Marylanders—especially infants, children, and pregnant women—from these well-documented dangers. Accordingly, the Attorney General supports SB 300 and urges the Committee to issue a favorable report.

cc: Members of the Education, Health, and Environmental Affairs Committee

¹⁵ *Id.*