

California Prop 65 Decision Raises New Potential Conflict with Federal Pesticide Product Registration and Labeling Requirements

Article By:

Joshua R. More

Monsanto officially lost its fight to avoid a **Prop 65** warning label on its products containing glyphosate, a chemical used in the popular herbicide *Roundup*. As we previously [reported](#), Monsanto argued that the State of California's reliance on an unelected, European organization to decide that glyphosate poses a cancer risk was improper. Last month, a California superior court rejected Monsanto's arguments.

California's Office of Environmental Health Hazard Assessment (OEHHA) maintains California's [Prop 65 list](#) of chemicals identified as causing cancer or reproductive toxicity. The list is updated at least annually. Once OEHHA adds glyphosate to the Prop 65 list, companies that make products containing glyphosate will have 12 months to comply with the Prop 65 warning requirements. Although Prop 65 provides certain exemptions, companies may soon face possible civil suits relating to products containing glyphosate if they do not comply with labeling requirements.

In addition, the court's decision raises a potential conflict between California's Prop 65 warning label requirements and the pesticide registration and product labeling requirements under the Federal Insecticide, Fungicide, and Rodenticide Act. Pesticide product labels are intended to govern all aspects of a pesticide product, including distribution, use, application, and initial registration of the product with the U.S. Environmental Protection Agency (EPA). The EPA must approve any change or deviation made to a pesticide product label.

As recently as 2014, the EPA reaffirmed its conclusion that glyphosate is not cancerous to humans. So California's decision to add glyphosate to the Prop 65 list raises a potential conflict for pesticide manufacturers that produce products containing glyphosate. Given this conflict, pesticide product manufacturers should take notice that labels for their products containing glyphosate may now be susceptible to new Prop 65 labeling requirements.

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