Nonprofits Sue EPA for Failure to Regulate Novel Pesticide Products Created With Nanotechnology

Nanomaterials have proliferated in food and other consumer products with little to no oversight

Lawsuit Will Compel Unlawfully Delayed Agency Answer to Groups’ 2008 Legal Petition Demanding Regulation

December 17, 2014 (Washington, DC)- Center for Food Safety (CFS) filed a lawsuit late yesterday against the U.S. Environmental Protection Agency (EPA) over the agency’s failure to regulate novel nanomaterial pesticides. In 2008 CFS filed a legal petition demanding the agency take action; today nonprofits sued the agency for its failure to answer their petition while the proliferation of nanomaterials in consumer products continues unabated.

“Six years ago we provided EPA a legal and scientific blueprint to address the regulation of these novel materials under its pesticide authority. The agency’s unlawful and irresponsible delay ends now,” said CFS senior attorney George Kimbrell.

Nanotechnology is a platform technology for manipulating materials at the atomic and molecular level; manufactured nanomaterials are so small that they cannot be seen with an ordinary microscope. For comparison, a strand of human hair is 50,000 to 80,000 nanometers wide. Yet “nano” means more than just tiny; it means materials that have the capacity to act in fundamentally novel ways, ways that cannot be predicted from the same materials at larger scale. Their exponentially small size gives them extraordinary mobility for a manufactured material, as well as unique chemical and biological properties. Nanomaterials’ properties increase potential for biological interaction and increase potential for toxicity, which can result in DNA mutation, structural damage within the cell, and even cell death. Once in the blood stream, they can move freely through organs and tissues, including the brain, heart, liver, kidneys, spleen, bone marrow, and nervous system.

“Nanomaterials are novel technologies that pose unique risks unlike anything we’ve seen before,” said Jaydee Hanson, CFS senior policy analyst. “Yet we have found hundreds of products already commercially available, without any regulation.”

Nano-silver products are the overwhelmingly most common nanomaterial in consumer products, commonly used as a powerful antimicrobial agent. Because the products are intended to kill bacteria, they qualify as pesticide products, as EPA itself has recognized. In its 2008 Petition, CFS identified 260 nano-silver consumer products, and currently that number has increased to over 400 nano-silver products on the market today. Because
there are no labeling requirements for nano-scale products, many more likely exist.

“It is unfortunate that it takes a lawsuit to get EPA to carry out its responsibility to regulate nano-silver for its toxic pesticidal properties and broad exposure patterns through consumer and personal care products,” said Jay Feldman, executive director of Beyond Pesticides. "Like any toxic pesticide, nano-silver must be subject to the full force of the law and label restrictions intended to protect people's health and the environment," Mr. Feldman said.

“If the EPA fails to regulate pesticide products that incorporate nano-silver, farmers will soon be exposed to the unique health risks of nanomaterials, and will be uninformed about what they must do to protect themselves, and their families, neighbors, land, water and livestock from nano-pesticide drift,” said Steve Suppan of the Institute for Agriculture and Trade Policy.

The plaintiffs represented by CFS legal counsel in the lawsuit are CFS, its sister nonprofit, the International Center for Technology Assessment, as well as, Beyond Pesticides, the Center for Environmental Health, Clean Production Action, and the Institute for Agriculture and Trade Policy.