

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

**In re FIFRA Section 6(b) Notice of Intent
to Cancel Pesticide Registrations for
Chlorpyrifos Products**)
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)
)
**Gharda Chemicals International, Inc., and
Red River Valley Sugarbeet Growers
Association, et al.,**)
)
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Petitioners.)
)
_____)

Docket No. FIFRA-HQ-2023-0001

**PETITIONERS’ RESPONSE TO RESPONDENT’S MOTION
FOR EXTENSION OF TIME TO SHOW CAUSE**

Petitioners Gharda Chemicals International, Inc. (“Gharda”) and Red River Valley Sugarbeet Growers Association, U.S. Beet Sugar Association, American Sugarbeet Growers Association, Southern Minnesota Beet Sugar Cooperative, American Crystal Sugar Company, Minn-Dak Farmers Cooperative, American Farm Bureau Federation, American Soybean Association, Iowa Soybean Association, Minnesota Soybean Growers Association, Missouri Soybean Association, Nebraska Soybean Association, South Dakota Soybean Association, North Dakota Soybean Growers Association, National Association of Wheat Growers, Cherry Marketing Institute, Florida Fruit and Vegetable Association, and Georgia Fruit and Vegetable Growers Association, and National Cotton Council of America (“Growers” and together with Gharda, “Petitioners”) hereby submit this response to Respondent’s Motion for Extension of Time to Show Cause, pursuant to this Tribunal’s Order Setting Briefing Schedule on Respondent’s Motion for Extension of Time to Show Cause, dated November 22, 2023.

Following the vacatur of the Final Rule¹ by the Eighth Circuit’s November 2, 2023 decision in the lawsuit captioned *Red River Valley Sugarbeet Growers Association, et al. v. Michael S. Regan, et al.*, No. 22-1422 (8th Cir.), the NOIC² should be dismissed entirely. As all parties have agreed in previous filings before this Tribunal, the NOIC is *entirely dependent* on the Final Rule. *See, e.g.*, Respondent’s Motion for Accelerated Decision at 15, 17 (“Petitioners are correct that the NOIC is ultimately based on the Final Rule” and “after revocation of all chlorpyrifos tolerances by the Final Rule. . . EPA was left with no other option than to issue the NOIC”), Intervenors’ Motion for Accelerated Decision at 18 (“The Final Rule, therefore, predetermined the outcome of this cancellation proceeding as a matter of law.”); *see also* Order to Show Cause at 2 (explaining that the NOIC proposed to cancel registrations because “as a direct result of the Final Rule, no tolerances existed for those registrations”); NOIC at 76474 (“[T]he Environmental Protection Agency (EPA) hereby announces its intent to cancel the registrations of three pesticide products containing the insecticide chlorpyrifos *due to the Agency’s revocation of all tolerances of chlorpyrifos.*”) (emphasis added). Now that the Final Rule is vacated, the NOIC should be similarly dismissed.

Despite the fact that the NOIC should unequivocally be dismissed, Respondent has sought an extension of the deadline to show cause as to why the NOIC *should not* be dismissed. In the event that Respondent’s motion is granted and, of course, depending on Respondent’s position in its response to the show cause order, Petitioners reserve their rights to seek a stay of the hearing on the NOIC, currently scheduled to begin on January 8, 2024. If the deadline to show cause is extended to December 19, as Respondent seeks, only three weeks would remain

¹ The “Final Rule” is Final Rule, Chlorpyrifos; Tolerance Revocations, 86 Fed. Reg. 48315 (Aug. 30, 2021).

² The “NOIC” is the EPA December 14, 2022 Notice of Intent to Cancel Pesticide Registrations.

between that deadline and the currently scheduled hearing. It would be a waste of all parties' resources to prepare for a hearing on the NOIC when the NOIC should be dismissed.

Further, Petitioners request that this Tribunal enter a briefing schedule on the Order to Show Cause to allow Petitioners to respond to any arguments Respondent and/or Intervenors make in their filings. Petitioners should be afforded the opportunity to review, analyze, and substantively respond to any arguments raised by Respondent and/or Intervenors as to why the NOIC should not be dismissed. If Respondent agrees that the NOIC *should* be dismissed, Petitioners' response obviously would be very brief. Petitioners should not be required to make a simultaneous submission that is forced to predict Respondent's and Intervenors' position(s). Petitioners therefore request that, if the deadline to show cause is extended to December 19, Petitioners be allowed to submit their filing responsive to the Order to Show Cause in order to respond to Respondent's and/or Intervenors' arguments by December 22.

This 28rd day of November, 2023,

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2023, a true and correct copy of the foregoing was filed electronically with the EPA OALJ E-Filing System for the OALJ's E-Docket Database, with a copy via electronic mail to the following:

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