

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

<b>In re FIFRA Section 6(b) Notice of Intent to Cancel Pesticide Registrations for Chlorpyrifos Products</b>	)	
	)	
	)	
<b>Gharda Chemicals International, Inc. and Red River Valley Sugarbeet Growers Association, et al.,</b>	)	<b>Docket No. FIFRA-HQ-2023-0001</b>
	)	
<b>Petitioners</b>	)	
	)	

**MOTION FOR EXTENSION OF TIME TO SHOW CAUSE**

Pursuant to the Presiding Officer’s November 8, 2023 Order on Respondent’s Motion for Extension of Time and Order to Show Cause (“Order to Show Cause”), the parties must file motion(s) showing cause as to why this proceeding should not be dismissed no later than December 1, 2023. The Order to Show Cause also held all prehearing deadlines on this matter in abeyance pending the Presiding Officer’s determination concerning dismissal of this proceeding.

The Eighth Circuit’s judgment in *Red River Valley Sugarbeet Growers Association, et al. v. Regan*, No. 22-1422 issued on November 2, 2023. Pursuant to Federal Rule of Appellate Procedure 40(a)(1), the period in which Respondent, the United States Environmental Protection Agency, may request rehearing of the matter before the Eighth Circuit ends on December 18, 2023. *See also* Fed. R. App. P. 26(a)(1)(c) (adding one day due to the last day of period falling on a Sunday). Accordingly, “the Agency still has a window of time in which to evaluate the [c]ourt’s decision and determine how to proceed in light of it.” *Sierra Pac. Indus. (Anderson Processing Facilities)*, 16 E.A.D. 1, 2013 WL 3791510 at 42 (EAB 2013). As the Presiding

Officer recognized, the Notice of Intent to Cancel (“NOIC”) at issue in the instant proceeding is directly related to the Agency’s Final Rule concerning chlorpyrifos tolerances at issue in the Eighth Circuit’s opinion and judgment. Order to Show Cause at 2. Issuance of the NOIC followed from the lack of chlorpyrifos tolerances. Thus, Respondent’s actions in the instant matter follow from how the Agency proceeds before the Eighth Circuit. If the Agency seeks rehearing or appeal<sup>1</sup> of the Eighth Circuit’s opinion, Respondent would include the basis for such rehearing as cause—at least in part—for why the instant matter should not be dismissed. Conversely, if the Agency opts not to seek rehearing or appeal, Respondent understands that no cause would exist against dismissal.

Accordingly, Respondent requests that the Presiding Officer modify the Order to Show Cause such that the Agency’s actions in the instant matter and before the Eighth Circuit may be coordinated. Respondent respectfully requests that the deadline to file a response to the Order to Show Cause be extended to December 19, 2023. The requested extension will not prejudice the other parties to this matter. A request for rehearing or appeal of the court’s opinion will have no effect on the registrations at issue in the NOIC; the status of the chlorpyrifos tolerances would remain unchanged until the issuance of the Eighth Circuit’s mandate, subject to any stay issued by a Federal Court. If the Agency does not seek rehearing and provides no cause as to why this action should not be dismissed, the Presiding Officer would likely dismiss the matter.

Intervenors do not oppose the filing of this motion; Petitioners take no position but reserve their right to oppose.

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<sup>1</sup> A petition for writ of certiorari to review the opinion of the Eighth Circuit would be due 90 days after entry of the judgement, on January 31, 2024. Rule 13 of the Supreme Court of the United States.

Respectfully submitted,

Dated: November 21, 2023

/s/ Forrest Pittman  
Forrest Pittman  
Pesticides and Toxic Substances Law Office  
Office of General Counsel  
U.S. Environmental Protection Agency  
  
Counsel for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing MOTION FOR EXTENSION OF TIME TO SHOW CAUSE, dated November 21, 2023 was filed electronically with the U.S. Environmental Protection Agency, Office of Administrative Law Judges E-filing system, with a copy via electronic mail to the following:

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