



ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re AMVAC Chemical Corporation;
Grower-Shipper Association of Central
California; J&D Produce; Ratto Bros., Inc.;
and Huntington Farms
Docket No. FIFRA-HQ-2022-0002
FIFRA Appeal No. 23-(01)

ORDER DECLINING TO EXERCISE SUA SPONTE REVIEW

This case arises from a notice of intent to suspend ("NOITS") the registration of the pesticide Technical Chlorthal Dimethyl pursuant to section 3(c)(2)(B)(iv) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). 7 U.S.C. § 136a(c)(2)(B)(iv). This is the second time the Environmental Appeals Board ("Board") has considered the NOITS. In the first case, Petitioners sought review of an accelerated decision by the Administrative Law Judge ("ALJ"). In re AMVAC Chemical Corp., 18 E.A.D. 769, 771 (EAB 2022). The Board remanded the case to the ALJ to conduct a hearing. Id. at 796. After conducting a hearing, on May 16, 2023, the Administrative Law Judge ("ALJ") issued an Initial Decision and Order dismissing Petitioners' objections to the NOITS, approving the NOITS, and suspending the registration effective upon the Initial Decision and Order becoming final. In re FIFRA Section 3(c)(2)(B) Notice of Intent to Suspend Dimethyl Tetrachloroterephthalate (DCPA) Technical Registration, Docket No. FIFRA-HQ-2022-0002 at 64 (ALJ May 16, 2023) (Initial Decision and Order).

Following the ALJ's Initial Decision and Order, the parties filed a motion with the Board seeking an extension of time to file exceptions while they pursued settlement discussions, which

the Board granted. Order Granting Joint Motion to Extend Deadline to File Exceptions and Appeal Brief (May 31, 2023). AMVAC and the Office of Pesticide Programs (“OPP”) entered into a Settlement Agreement and the parties filed joint motions requesting that the Board enter a final decision incorporating the terms of the Settlement Agreement and retaining jurisdiction to adjudicate disputes arising under the Settlement Agreement. Joint Motion for Entry of Final Decision (June 16, 2023); Renewed Joint Motion for Entry of Final Decision (June 27, 2023). The Board ultimately denied the motions because, among other things, the relief requested was “broader than the scope of the issues adjudicated by the [ALJ]” and would have required the Board to “undertake resolution of new disputes that have not yet arisen.” Order Denying Renewed Joint Motion for Entry of Final Decision 2 (July 7, 2023). The Board further extended the deadline for filing exceptions to August 18, 2023, to allow the parties to pursue settlement under an alternate framework. Order Granting Joint Motion to Extend Time for Filing Notice of Exceptions and Appeal Briefs (July 25, 2023).


On August 18, 2023, the parties notified the Board that none of the parties intended to file exceptions to the ALJ’s Initial Decision and Order. Joint Notice that No Appeals Will Be Filed 1 (Aug. 18, 2023). The parties further stated that AMVAC and OPP have reached a settlement agreement that does not require the Board or ALJ to retain jurisdiction and requested that the Board decline review of the Initial Decision and Order as soon as practicable. *Id.* at 1-2. No party has filed exceptions, the Board has reviewed the record and ruled on motions as reflected above, and the Board is declining to review the case on its own initiative. *See* 40 C.F.R.

§ 164.101(b).<sup>1</sup> Accordingly, the Initial Decision and Order becomes a final order on this date, August 22, 2023, pursuant to 40 C.F.R. §§ 164.90(b), .101(b), .103.

So ordered.<sup>2</sup>

**ENVIRONMENTAL APPEALS BOARD**

Dated: Aug 22, 2023

By:   
Kathie A. Stein  
Environmental Appeals Judge

---

<sup>1</sup> In the Board's Orders extending the deadline for filing extensions, the Board also extended the deadline for *sua sponte* review in order to preserve the normal interval between the deadline for exceptions and the Board's deadline to accept or decline *sua sponte* review. *See, e.g.*, Order Granting Joint Motion to Extend Time for Filing Notice of Exceptions and Appeal Briefs 3 n.1 (July 25, 2023). The Board's last Order extended the *sua sponte* review deadline to September 7, 2023. *Id.*

<sup>2</sup> The three-member panel deciding this matter consists of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Declining to Exercise Sua Sponte Review* in the matter of AMVAC Chemical Corporation; Grower-Shipper Association of Central California; J&D Produce; Ratto Bros., Inc.; and Huntington Farms, FIFRA Appeal No. 23-(01) were sent to the following persons in the manner indicated:

### **By Email:**

Hume M. Ross  
Tracy A. Heinzman  
Keith A. Matthews  
WILEY REIN LLP  
2050 M Street NW  
Washington, DC 20036  
Email: [hross@wiley.law](mailto:hross@wiley.law)  
Email: [theinzman@wiley.law](mailto:theinzman@wiley.law)  
Email: [kmatthews@wiley.law](mailto:kmatthews@wiley.law)

Cristen S. Rose  
HAYNES BOONE  
800 17th Street NW  
Washington, DC 20006  
Email: [cristen.rose@haynesboone.com](mailto:cristen.rose@haynesboone.com)

Erin S. Koch  
Forrest Pittman  
Pesticides and Toxic Substances Law Office  
Office of General Counsel  
U.S. Environmental Protection Agency Mail  
Code 2310A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
Email: [koch.erin@epa.gov](mailto:koch.erin@epa.gov)  
Email: [pittman.forrest@epa.gov](mailto:pittman.forrest@epa.gov)

Susan L. Biro, Chief Administrative Law  
Judge  
Attn: Mary Angeles, Headquarters Hearing  
Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Email: [angeles.mary@epa.gov](mailto:angeles.mary@epa.gov)

Dated: Aug 22, 2023



\_\_\_\_\_  
Emilio Cortes  
Clerk of the Board