

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

)	
In re Gharda Chemicals International, Inc.,)	
and Red River Valley Sugarbeet Growers)	
Association, et al.)	FIFRA Appeal No. 23-02
)	
Docket No. FIFRA-HQ-2023-0001)	
)	
)	

SCHEDULING ORDER ON PETITIONERS’ MOTION FOR APPEAL
OF ALJ ORDER DENYING STAY

This matter arises from the U.S. Environmental Protection Agency’s Notice of Intent to Cancel the registration of the pesticide chlorpyrifos under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136d. Petitioners Gharda Chemicals International, Inc. (“Gharda”) and a group of grower organizations¹ filed objections to the Notice of Intent to Cancel and requested a hearing with the Office of Administrative Law Judges (“ALJs”). Petitioners’ Motion for Appeal of Order Denying Stay to Environmental Appeals Board exs. 5-6 (June 1, 2023) (“Motion for Appeal”). Petitioner Gharda also requested a stay of proceedings on the Notice of Intent to Cancel, including the requested hearing, pending the outcome of litigation in the Eighth Circuit Court of Appeals, where Petitioners challenged a final rule revoking food tolerances for chlorpyrifos. *Id.* ex. 5 at 12-13.

¹ The grower organizations are 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, Georgia Fruit and Vegetable Growers Association, and National Cotton Council of America.


On March 31, 2023, ALJ Christine Donelian Coughlin denied the request to stay the proceedings. Order on Petitioner Gharda Chemical International, Inc.'s Motion to Stay (ALJ Mar. 31, 2023) ("Order Denying Stay"); *see* Motion for Appeal ex. 8. Petitioners sought certification of the ALJ's Order Denying Stay for an interlocutory appeal to the Environmental Appeals Board ("Board") pursuant to 40 C.F.R. § 164.100. Motion for Appeal ex. 1 at 2. On May 22, 2023, the ALJ denied the request to certify the Order Denying Stay for appeal to the Board. Order Denying Petitioners' Request for Certification to the Environmental Appeals Board (ALJ May 22, 2023); *see* Motion for Appeal ex. 4 at 1. On June 1, 2022, Petitioners filed a motion with the Board requesting review of the ALJ's Order Denying Stay. Motion for Appeal at 2.

Under 40 C.F.R. § 164.60, any response to the Motion for Appeal is due within ten days of service of the motion. 40 C.F.R. § 164.60(b). Since the tenth day falls on a Sunday, the response is due the following Monday, June 12, 2023. *Id.* § 164.6(a). The Board may request and set a time for a reply in support of a motion in accordance with 40 C.F.R. § 164.60(b). Accordingly, the Board hereby orders that any response to the Motion for Appeal shall be filed with the Board on or before **Monday, June 12, 2023**. The response shall not exceed five pages using double spacing, twelve-point font, and one-inch margins. Order Governing Procedures for Registration-Related Appeals Under the Federal Insecticide, Fungicide, and Rodenticide Act 3-4 (EAB July 8, 2022). The Board further orders that any reply in support of the Motion for Appeal shall be filed on or before **Friday, June 16, 2023**. The reply shall not exceed three pages using double spacing, twelve-point font, and one-inch margins.

So ordered.

Dated: June 5, 2023

ENVIRONMENTAL APPEALS BOARD

By:  _____
Aaron P. Avila
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Scheduling Order on Petitioners' Motion for Appeal of ALJ Order Denying Stay* in the matter of Gharda Chemicals International, Inc. and Red River Valley Sugarbeet Growers Association, et al., were sent to the following persons by electronic mail:

For Petitioner Gharda Chemicals International, Inc.

Donald C. McLean
Matille G. Bowden
ARENTFOX SCHIFF, LLP
1717 K Street NW
Washington, DC 20006
(202) 857-6000
donald.mclean@afslaw.com
mattie.bowden@afslaw.com

For Respondent U.S. Environmental Protection Agency

Aaron Newell
Angela Huskey
Office of General Counsel
Pesticides and Toxic Substances Law Office
Environmental Protection Agency
(202) 564-2482
newell.aaron@epa.gov
huskey.angela@epa.gov

For Petitioners Red River Valley Sugarbeet Growers Association, et al.

Nash E. Long
HUNTON ANDREWS KURTH LLP
101 S. Tryon Street, Suite 3500
Charlotte, NC 28280
(704) 378-4728
nlong@huntonak.com

For Intervenors

Patti A. Goldman
Noorulanne Jan
Earthjustice
810 3rd Avenue, Suite 610
Seattle, WA 98104
(206) 343-7340
pgoldman@earthjustice.org
njan@earthjustice.org

Javaneh S. Tarter
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Ave., NW
Washington, DC 20037
(202) 955-1500
jtarter@huntonak.com

Dated: Jun 05, 2023

Emilio Cortes

Emilio Cortes
Clerk of the Board