

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

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

**ORDER GRANTING JOINT MOTION TO EXTEND TIME FOR FILING NOTICE OF  
 EXCEPTIONS AND APPEAL BRIEFS**

On July 21, 2023, Petitioners AMVAC Chemical Corporation (“AMVAC”), the Grower-Shipper Association of Central California, J&D Produce, Ratto Bros., Inc., and Huntington Farms (“Grower Petitioners”) and Respondent U.S. EPA Office of Chemical Safety and Pollution Prevention, Office of Pesticide Programs (“OPP”) filed a Joint Motion to Extend Time for Filing Exceptions and Appeal Briefs to allow the parties to continue settlement discussions. The Environmental Appeals Board (“Board”) finds that cause exists to extend the time for filing of exceptions and appeal briefs, and therefore grants the Joint Motion as described further below.

This matter arises from OPP’s notice of intent to suspend AMVAC’s 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). On May 16, 2023, Chief Administrative Law Judge (“ALJ”) Susan L. Biro issued an Initial Decision and Order dismissing AMVAC’s and the Grower Petitioners’ objections to the notice of intent to suspend. *In re FIFRA Section 3(c)(2)(B) Notice of Intent to Suspend Dimethyl Tetrachloroterephthalate (DCPA) Technical Registration*, Docket No. FIFRA-HQ-2022-0002

(ALJ May 16, 2023) (Initial Decision and Order). The parties filed a motion before the Board to extend the deadline to file exceptions to the ALJ's Initial Decision and Order to allow the parties to engage in settlement discussions, which the Board granted. Order Granting Motion to Extend Deadline to File Exception and Appeal Brief (May 31, 2023). AMVAC and OPP then entered into a Settlement Agreement and the parties filed a joint motion 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). The Board denied the motion without prejudice and authorized the parties to file a new motion addressing five questions posed in the Board's Order. Order Denying Joint Motion for Entry of Final Decision Without Prejudice 2 (June 22, 2023).

The parties filed a renewed motion responding to the Board's questions and again requesting that the Board enter a final order retaining jurisdiction to adjudicate disputes that may arise under the settlement. Renewed Joint Motion for Entry of Final Decision (June 27, 2023). The Board denied the renewed motion because 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 stated that it was "not prepared to retain jurisdiction to resolve disputes that are more appropriately resolved by the parties or through a separate mediation or process" and again extended the deadline for filing exceptions and appeal briefs. *Id.* at 6.

The parties now seek a further extension of the time to file exceptions and appeal briefs. Joint Motion to Extend Time for Filing Notice of Exceptions and Appeal Briefs 1 (July 21, 2023). AMVAC and OPP indicate that they "are continuing to pursue settlement in this matter

under an alternate framework that would not request or require the EAB or the Office of Administrative Law Judges \* \* \* to retain jurisdiction or provide any form of oversight or approval in connection with the settlement agreement.” *Id.* at 2. AMVAC and OPP further represent that the extension will permit them to pursue settlement discussions without diverting time and effort to a proceeding before the Board. *Id.* To that end, the parties jointly request an extension of the time to file exceptions and appeal briefs until August 18, 2023, and responses thereto until August 25, 2023, and stipulate to an extension of the 90-day deadline for the Board to issue an order by the number of days between the current deadline for exceptions, July 27, 2023, and the requested extended deadline. *Id.* at 2-3.

The Board has discretion to order the enlargement of any time period after the ALJ files an initial decision for cause shown and in consideration of the deadline to issue a final order. 40 C.F.R. § 164.6(b). In consideration of the parties’ representations in the Joint Motion to Extend Time for Filing Notice of Exceptions and Appeal Briefs and stipulation to extend the Board’s deadline to issue a final order, the Board finds that cause exists to extend the deadline for filing of exceptions and appeal briefs and that such extension will promote the efficient resolution of this matter. Accordingly, the Board hereby:

1. **GRANTS** the Joint Motion to Extend Time for Filing Notice of Exceptions and Appeal Briefs;
2. **ORDERS** that any exceptions to the Initial Decision and Order and appeal briefs on such exceptions be filed with the Board no later than August 18, 2023;<sup>1</sup> and

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<sup>1</sup> This order extends the deadline for filing exceptions beyond the time (thirty days from the filing of the initial decision) within which the hearing clerk is required to notify the Administrator if no exceptions are filed. 40 C.F.R. § 164.101(b). Ordinarily, such notification

3. **ORDERS** that any responses to the exceptions and appeal briefs be filed no later than August 25, 2023.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: Jul 25, 2023

By: 

Kathie A. Stein  
Environmental Appeals Judge

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would take place ten days after the deadline for exceptions and the Board would have an additional ten days to “issue an order either declining review of the initial decision or expressing its intent to review said initial decision.” *Id.* In order to preserve that interval for this case, the Board will defer any consideration of *sua sponte* review until after the revised deadline for filing exceptions and appeal briefs expires on August 18, 2023, and, if no exceptions are filed, the Board shall have until September 7, 2023, to issue an order either expressing an intent to review or declining review of the initial decision. *See In re San Pedro Forklift*, CWA Appeal No. 12-02, at 1-2 n.1 (EAB Apr. 12, 2012) (Order Granting Second Motion for Extension of Time to File Appeal).

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Granting Joint Motion to Extend Time for Filing Notice of Exceptions and Appeal Briefs* 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)M, were sent to the following persons by electronic mail:

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Dated: Jul 25, 2023

  
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Emilio Cortes  
Clerk of the Board