

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 DEADLINE TO FILE
EXCEPTIONS AND APPEAL BRIEF

On May 16, 2023, Chief Administrative Law Judge (“ALJ”) Susan L. Biro issued an Initial Decision and Order in Docket No. FIFRA-HQ-2022-0002, dismissing Petitioners AMVAC Chemical Corporation, the Grower-Shipper Association of Central California, J&D Produce, Ratto Bros., Inc., and Huntington Farms’ objections to a notice of intent to suspend the registration of 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 26, 2023, Respondent U.S. EPA Office of Chemical Safety and Pollution Prevention, Office of Pesticide Programs (“OPP”) filed a Joint Motion to Extend Deadline to File Exceptions and Appeal Brief (“Motion”) with the Environmental Appeals Board (“Board”). In the Motion, the parties indicate that they are pursuing settlement of this matter and that absent an extension, they will be required to divert their attention from settlement discussions to a proceeding before the Board. Motion at 1-2.

The regulations governing appeals from initial decisions in FIFRA suspension proceedings provide that a party may file exceptions to the decision and an appeal brief within

twenty days after the ALJ files the initial decision. 40 C.F.R. § 164.101(a)(1). Therefore, exceptions to the ALJ's Initial Decision and Order in this matter would be due June 5, 2023. In their Joint Motion, the parties seek an extension of the time period to file exceptions to the Initial Decision and Order and appeal briefs until June 23, 2023. Motion at 1-2. Further, the parties agree to file a joint report describing the status of settlement discussions no later than June 16, 2023, and jointly stipulate to extend the ninety-day deadline for the Board to issue its final decision by eighteen days, which would extend the Board's deadline by the same amount of time as the proposed extension of time to file exceptions. Motion at 2; *see* 40 C.F.R. § 164.103.

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 Motion 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 Deadline to File Exceptions and Appeal Brief;
2. **ORDERS** that the parties file a joint status report describing the status of settlement negotiations no later than June 16, 2023;
3. **ORDERS** that any exceptions to the Initial Decision and Order and appeal briefs on such exceptions be filed with the Board no later than June 23, 2023;¹ and

¹ 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 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

4. **ORDERS** that any responses to the exceptions and appeal briefs be filed no later than June 30, 2023.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: May 31, 2023

By: 

Kathie A. Stein
Environmental Appeals Judge

until after the revised deadline for filing exceptions and appeal briefs expires on June 23, 2023, and, if no exceptions are filed, the Board shall have until July 13, 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 Deadline to File Exceptions and Appeal Brief 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:

For Petitioner AMVAC Chemical Corporation

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

For Respondent Office of Pesticide Programs

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: pittman.forrest@epa.gov

For Petitioners Grower-Shipper Association of Central California; J&D Produce; Ratto Bros., Inc.; and Huntington Farms

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

Dated: May 31, 2023

Emilio Cortes

Emilio Cortes
Clerk of the Board