

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

In re:)	
)	
AMVAC Chemical Corporation; Grower-)	FIFRA Appeal Nos. 22-01 & 22-02
Shipper Association of Central California;)	
J&D Produce; Ratto Bros., Inc.; and)	
Huntington Farms)	
)	
Docket No. FIFRA-HQ-2022-0002)	

**ORDER GRANTING LEAVE TO FILE REPLY BRIEF AND
 CONSOLIDATING CASES**

Petitioners-Appellants AMVAC Chemical Corporation (“AMVAC”) and the Grower-Shipper Association of Central California, J&D Produce, Ratto Bros., Inc., and Huntington Farms (“Grower Group”) filed exceptions to the Administrative Law Judge’s July 1, 2022 Order granting Respondent-Appellee U.S. Environmental Protection Agency Office of Chemical Safety and Pollution Prevention, Office of Pesticide Programs (“OPP”)’s Motion for Accelerated Decision. AMVAC and the Grower Group have filed briefs in support of the exceptions and OPP has filed its response. Now pending before the Environmental Appeals Board (“Board”) are two motions: AMVAC’s opposed Motion for Leave to File Reply Brief and for Oral Argument (“Motion for Leave”) and OPP’s Joint Motion to Consolidate Appeals (“Motion to Consolidate”).

In support of the Motion for Leave, AMVAC argues that these appeals raise novel issues of importance to registrants beyond the parties involved and that OPP’s response brief mischaracterized facts and law and introduced new evidence. Motion for Leave to File Reply Brief and for Oral Argument 2-3 (Aug. 2, 2022). AMVAC filed a proposed Reply Brief with its Motion. *Id.* at 3; [Proposed] Reply Brief of AMVAC Chemical Corporation (Aug. 2, 2022).

OPP opposes the Motion for Leave, arguing that the opening and response briefs and record are sufficient to decide the case. Respondent's Opposition to Petitioner's Motion for Leave to File Reply Brief and for Oral Argument (Aug. 3, 2022). AMVAC filed a reply responding to OPP's opposition to the Motion for Leave.¹ Reply to Opposition to Motion for Leave (Aug. 4, 2022).

In support of the Motion to Consolidate, the parties state that both AMVAC's and the Grower Group's appeals arise from the same notice of intent to suspend a pesticide registered by AMVAC, address the same Order issued by the Administrative Law Judge, and raise similar issues that would be more efficiently resolved together. Joint Motion to Consolidate Appeals 1 (Aug. 4, 2022).

Turning first to the Motion for Leave, the regulations provide that a party appealing an accelerated decision by an ALJ may file exceptions and a supporting brief, and any other party may file a brief responding to the exceptions. 40 C.F.R. § 164.102(a), (b). The Board also "may allow additional briefs and oral argument." *Id.* § 164.102(c); *see also* Order Governing Procedures for Registration-Related Appeal Under the Federal Insecticide, Fungicide, and Rodenticide Act 4 (July 8, 2022) ("FIFRA Standing Order") ("The Board in its discretion may issue an order modifying these procedures as appropriate on a case-by-case basis * * *."). The Board agrees that these appeals appear to raise novel issues of importance to registrants beyond the parties involved and further finds that granting leave to file the proposed Reply Brief will assist the Board in its deliberations. Additionally, because AMVAC filed its proposed Reply Brief with the Motion for Leave, granting leave will not delay the resolution of these appeals.

¹ The Board accepts for filing the reply in support of the Motion for Leave.

Accordingly, the Board will accept the reply for filing. *See* 40 C.F.R. § 164.102(c). The Board does not, at this juncture, decide whether to grant AMVAC's request for oral argument.

Regarding the Motion to Consolidate, the Board agrees that the two appeals involve the same notice of intent to suspend a pesticide registration and raise exceptions to the same Order by the Administrative Law Judge. Moreover, OPP has already filed a response brief addressing both appeals. Response Brief of Respondent 1 (July 28, 2022). No party objects to consolidation and the Board finds that it would be in the interest of judicial economy to administratively consolidate these appeals. *See* FIFRA Standing Order at 4. By this Order the Board administratively consolidates these appeals. The parties shall include both appeal numbers on any future filings as shown in the caption above.


Upon examination of the filings in this case, the Board hereby:

1. **GRANTS IN PART** the Motion for Leave and the Reply Brief and Exhibit A are deemed filed and part of the record for these matters; and
2. **GRANTS** the Motion to Consolidate.

So ordered.

Dated: 8/10/22

ENVIRONMENTAL APPEALS BOARD

By: 
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Granting Leave to File Reply Brief and Consolidating Cases* in the matter of AMVAC Chemical Corporation; Grower-Shipper Association of Central California; J&D Produce; Ratto Bros., Inc.; and Huntington Farms, FIFRA Appeal Nos. 22-01 & 22-02, were sent to the following persons by electronic mail:

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Dated: Aug 10, 2022



Emilio Cortes
Clerk of the Board