



**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.;)	FIFRA Appeal No. 23-(01)M
and Huntington Farms)	
)	
Docket No. FIFRA-HQ-2022-0002)	
_____)	

**ORDER DENYING JOINT MOTION FOR ENTRY OF
FINAL DECISION WITHOUT PREJUDICE**

On June 16, 2023, Petitioners AMVAC Chemical Corporation (“AMVAC”), the Grower-Shipper Association of Central California, J&D Produce, Ratto Bros., Inc., and Huntington Farms, and Respondent U.S. EPA Office of Chemical Safety and Pollution Prevention, Office of Pesticide Programs (“OPP”) filed a Joint Motion for Entry of Final Decision (“Joint Motion”) incorporating the terms of a Settlement Agreement between AMVAC and OPP. The Joint Motion requests that the Environmental Appeals Board (“Board”) enter a Final Decision and Order suspending AMVAC’s registration of technical dimethyl tetrachloroterephthalate (“DCPA”) subject to reinstatement pursuant to the terms of the Settlement Agreement and “retain[ing] jurisdiction to enforce the Settlement Agreement and adjudicate any disputes arising under it.” Joint Motion at 3. (The parties filed a proposed Final Decision and Order with the Joint Motion that states that “[t]his order shall be enforceable under section 12(a)(2)(J) of [the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”).”) In the alternative, the parties request that the deadline for filing exceptions to the Administrative Law Judge’s Initial Decision

and Order be extended for twenty days after the Board declines to issue a final decision incorporating the terms of the Settlement Agreement. Joint Motion at 3.

The Joint Motion does not provide an explanation of the legal basis for the Board to issue the proposed Final Decision and Order and retain jurisdiction to enforce and adjudicate disputes concerning the settlement. Further, the Joint Motion does not address how such action would comport with Board precedent or what procedures the Board would apply to enforce the settlement agreement or adjudicate any disputes arising under it. Because the Joint Motion does not provide sufficient information for the Board to issue the Final Decision and Order requested by the parties, the Board denies the Joint Motion without prejudice.

The parties may, within five days of the date of this order, file a new Motion for Entry of Final Decision. Any new motion shall address the following:

1. Legal Basis for Final Decision and Order: Explain what the legal basis is for the Board to issue a Final Decision and Order prior to the filing of any exceptions pursuant to 40 C.F.R. § 164.101(a).
2. Legal Basis for Continuing Jurisdiction: Explain why the Board has the authority to retain jurisdiction to enforce the Settlement Agreement and adjudicate disputes in accordance with FIFRA and 40 C.F.R. Part 164.
3. Enforcement of the Settlement Agreement: Explain the legal basis and authority for the Board to enforce the settlement agreement and how this would comport with the Environmental Protection Agency's delegations of authority for enforcement of the FIFRA. *See, e.g.*, U.S. Environmental Protection Agency, Delegations Manual, Delegation 5-14. The proposed Final Decision and Order states that "[t]his order shall be enforceable under section 12(a)(2)(J) of FIFRA," which provides that a violation of a

suspension order is unlawful. Pursuant to section 14 of FIFRA, such a violation is subject to civil penalties following notice and an opportunity for a hearing or criminal penalties assessed by a court. 7 U.S.C. § 136l.

4. Resolution of Disputes: Explain the legal authority for the Board to resolve disputes arising under the Settlement Agreement, and how the Board would resolve disputes arising under the Settlement Agreement, particularly those involving questions of fact, in accordance with 40 C.F.R. Part 164. Include in this response an explanation as to why it is appropriate for the EAB to resolve disputes concerning the outstanding studies before those disputes have been heard by an Administrative Law Judge. Finally, explain what standard of review would apply to the Board's review of any such disputes.
5. Consistency with Precedent: Explain how the Settlement Agreement is consistent with the Board's decision in *In re Arizona Municipal Storm Water NPDES Permits for City of Tucson, et al.*, NPDES Appeal No. 98-5 (EAB Mar. 25, 1999) (Order Dismissing Petition).

Having denied the request for a Final Decision and Order, the Board now turns to the parties' alternative request for relief. The parties request, if the Board denies the requested Final Decision and Order, that the Board extend the time to file exceptions by twenty days from the denial. In connection with this request, the parties stipulated to extend the deadline for the Board to issue a final decision by the number of days between the current deadline for exceptions and the extended deadline for exceptions. In consideration of the Board's denial of the Joint Motion without prejudice, the parties' alternative request for an extension, and stipulation to an extension of the Board's deadline by the same number of days, the Board finds that cause exists


to extend the deadline for filing of exceptions and appeal briefs in accordance with 40 C.F.R. § 164.6(b). Accordingly, the Board hereby:

1. **DENIES** the Joint Motion without prejudice;
2. **ORDERS** that any new Motion for Entry of Final Decision be filed with Board no later than June 27, 2023 and address the questions presented above;
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 July 12, 2023;¹ and
4. **ORDERS** that any responses to the exceptions and appeal briefs be filed no later than July 19, 2023.

So ordered.²

ENVIRONMENTAL APPEALS BOARD

Dated: June 22, 2023

By: 
Kathie A. Stein
Environmental Appeals Judge

¹ This order further 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 until after the revised deadline for filing exceptions and appeal briefs expires on July 12, 2023, and, if no exceptions are filed, the Board shall have until August 1, 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).*

² The three-member panel deciding this matter is composed 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 Denying Joint Motion for Entry of Final Decision Without Prejudice 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: Jun 22, 2023

Emilio Cortes

Emilio Cortes
Clerk of the Board