

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In re FIFRA Section 3(c)(2)(B) Notice of Intent)
to Suspend Dimethyl Tetrachloroterephthalate)
(DCPA) Technical Registration)
)
AMVAC Chemical Corporation;)
Grower-Shipper Association of Central)
California; Sunheaven Farms, LLC; J&D)
Produce; Ratto Bros., Inc.; and Huntington)
Farms,)
Petitioners.)

Docket No. FIFRA-HQ-2022-0002

HEARING AND SCHEDULING ORDER FOLLOWING REMAND

Petitioners commenced this action on May 27, 2022 when they objected to the U.S. Environmental Protection Agency's ("EPA" or "the Agency") proposal to suspend registration of the pesticide dimethyl tetrachloroterephthalate and requested a hearing on the matter. *See* Notice of Intent to Suspend Dimethyl Tetrachloroterephthalate (DCPA) Technical Registration, 87 Fed. Reg. 25262 (April 28, 2022) ("NOITS"); Objection and Request for Hearing by Grower-Shipper Association of Central California, Sunheaven Farms, LLC, J&D Produce, Ratto Bros. Inc., and Huntington Farms ("Grower Group") (May 27, 2022); Request for Hearing and Statement of Objections by AMVAC Chemical Corporation (May 27, 2022).

On June 13, 2022, the Agency moved for accelerated decision, which I granted on July 1, 2022. *See* Respondent's Motion for Accelerated Decision; Order on Respondent's Motion for Accelerated Decision. Petitioners appealed the accelerated decision Order to the Environmental Appeals Board ("EAB") on July 21, 2022.

On September 28, 2022, the EAB issued a Decision and Remand Order ("Remand Order") holding that this Tribunal misconstrued the applicable statutory standard and improperly granted accelerated decision. The EAB directed that a hearing be held "to determine whether AMVAC failed to take appropriate steps to secure the data listed in Table 2 of the DCPA NOITS and, if so, whether the provisions of the DCPA NOITS concerning existing stocks are consistent with FIFRA." Remand Order at 28.

Therefore, in accordance with the Remand Order, prehearing deadlines and hearing dates are established as follows:

<u>Settlement and Status Report</u>. The parties shall engage in a settlement conference on or before **October 14, 2022**, and attempt to reach an amicable resolution of this matter. Without

mentioning any specific terms of settlement, Respondent shall file a Status Report regarding this conference and the status of settlement on or before **October 21, 2022**. The Status Report shall further state whether, since July 1, 2022, the Agency has determined that any of the outstanding data requests that are the subject of the NOITS have been resolved.

Additional Discovery. Prior to remand, the parties submitted their primary discovery documents and verified witness statements in lieu of oral direct testimony. For the purpose of expediting the hearing and to simplify the contested issues, the parties may now engage in further mutually agreed upon discovery utilizing the standard methods of discovery described in the Federal Rules of Civil Procedure. Such discovery shall be limited to addressing whether Petitioner AMVAC took appropriate steps to secure each of the 20 data items listed in the NOITS and whether the provisions of the NOITS concerning existing stocks are consistent with FIFRA. *See* 40 C.F.R. §§ 164.50, 164.51. If the parties cannot agree on a discovery matter, they must file a motion seeking further discovery. Any such motion must be filed no later than **October 28, 2022**. All discovery shall be completed no later than **December 16, 2022**.

<u>Other Motions</u>. Motions for subpoenas shall be filed no later than **December 23**, **2022**. Motions in limine shall be filed no later than **15 days** prior to hearing. Likewise, a party may freely amend its witness list, narrative summaries of expected testimony, documents, or exhibits, except that any amendment sought within **15 days** of the hearing must be accompanied by a motion demonstrating good cause for the amendment.

<u>Joint Stipulations</u>. The time allotted for the hearing is limited. Therefore, the parties shall make a good faith effort to stipulate as much as possible to matters that cannot reasonably be contested. This practice ensures that the hearing is concise and focused solely on those matters that can only be resolved after an evidentiary hearing. Any stipulations reached by the parties shall be filed as a Joint Set of Stipulated Facts, Exhibits, and/or Testimony on or before **January 20, 2023**.

<u>Prehearing Briefs</u>. The parties may, if they wish, file prehearing briefs on or before February 3, 2023.

<u>**Prehearing Conference**</u>. A prehearing conference will be scheduled in advance of the hearing and conducted by an Attorney-Advisor for this Tribunal.

<u>Hearing</u>. The hearing in this matter will be held beginning promptly at **9 a.m. ET** on **Tuesday, February 14, 2023**, and continue as necessary through Friday, February 17, 2022. The hearing will take place at:

EPA Administrative Courtroom EPA East Building, Room 1152 1201 Constitution Ave. NW Washington, D.C. 20460

Additional information about the hearing will be provided at a later date. The parties are hereby advised that the hearing will be held virtually using videoconferencing technology if

conditions related to the spread of COVID-19 within Washington, D.C. require it as the scheduled hearing approaches.

Individuals requiring special accommodations for the hearing, including the services of an interpreter, must contact Mary Angeles, Headquarters Hearing Clerk, at (202) 564-6281 or angeles.mary@epa.gov, no later than 30 days prior to the scheduled hearing, so that appropriate arrangements can be made. If you have any procedural questions or questions about what to expect at the hearing, you may contact OALJ staff attorneys Matt Barnwell or Alyssa Katzenelson at barnwell.matt@epa.gov and katzenelson.alyssa@epa.gov, respectively. Under no circumstances should you telephone or email the undersigned directly.

SO ORDERED.

Susan L. Biro Chief Administrative Law Judge

Dated: October 3, 2022 Washington, D.C.

In re FIFRA Section 3(c)(2)(B) Notice of Intent to Suspend Dimethyl Tetrachloroterephthalate (DCPA) Technical Registration

AMVAC Chemical Corporation; Grower-Shipper Association of Central California; Sunheaven Farms, LLC; J&D Produce; Ratto Bros., Inc.; and Huntington Farms, Petitioners. Docket No. FIFRA-HQ-2022-0002

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Hearing and Scheduling Order Following Remand**, dated October 3, 2022, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.

Manwell Matt Barnwell

Attorney-Advisor

Copy by OALJ E-Filing System to: Mary Angeles, Headquarters Hearing Clerk U.S. Environmental Protection Agency Office of Administrative Law Judges Ronald Reagan Building, Rm. M1200 1300 Pennsylvania Ave. NW Washington, DC 20004

<u>Copy by Electronic Mail to</u>: Forrest Pittman Erin S. Koch 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 koch.erin@epa.gov

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Dated: October 3, 2022 Washington, D.C.