



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

ORDER SCHEDULING HEARING AND PREHEARING PROCEDURES

As you have been previously notified, the undersigned has been designated to preside over this proceeding. This proceeding is governed by the *Rules of Practice Governing Hearings, under the Federal Insecticide, Fungicide, and Rodenticide Act, Arising from Refusals to Register, Cancellations of Registrations, Changes of Classifications, Suspensions of Registrations and Other Hearings Called Pursuant to Section 6 of the Act*, 40 C.F.R. Part 164 (“Rules of Practice”), to the extent applicable. The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. Further, the procedures provided in the Rules of Practice are modified as outlined below to promote compliance with Section 3(c)(2)(B)(iv) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136a(c)(2)(B)(iv), which requires that “a hearing shall be held and a determination made within seventy-five days” after a hearing is requested. *See also* 40 C.F.R. § 164.40(d) (“[T]he Administrative Law Judge shall have power to take actions and decisions in conformity with statute or in the interests of justice.”).¹

Settlement. U.S. Environmental Protection Agency (“Agency” or “EPA”) policy encourages settlement of a proceeding without the necessity of a formal hearing, and the benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. The Office of Administrative Law Judges (“OALJ”) offers the assistance of a neutral to facilitate settlement negotiations if *all* parties agree in writing. Any **Joint Motion for the Appointment of a Neutral** shall be filed no later than **June 10, 2022**. The Joint Motion shall contain a stipulation by all parties that they agree to the tolling of the 75-day deadline under 7 U.S.C. § 136a(c)(2)(B)(iv) for the corresponding number of days that this matter is under the

¹ Any inconsistencies between the Rules of Practice and the procedures described in this Order will be resolved in favor of expeditiously concluding this hearing and issuing a determination within seventy-five days.

supervision of the neutral appointed to facilitate settlement negotiation.

However, be advised that, unless a neutral has been appointed, the mere pendency of settlement negotiations or even the existence of a settlement in principle does not constitute a basis for failing to strictly comply with the following prehearing exchange requirements or otherwise delaying the proceedings. Only the filing with the Headquarters Hearing Clerk of a fully-executed settlement agreement, or an order of the judge, excuses noncompliance with filing deadlines.

Opportunity for a Hearing. The Notice of Intent to Suspend (“NOITS”) in this matter gave Petitioners notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554 *et seq.* (“APA”). In this regard, Section 554(c)(2) of the APA provides that a hearing be conducted under Section 556 of the APA. Section 556(d) provides that a party is entitled to present its case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Generally, a party is entitled to elect any or all three means to present its case. If any party intends to only conduct cross-examination of witnesses and to forgo the presentation of direct and/or rebuttal evidence, the party shall serve a statement to that effect on or before the date for filing its prehearing exchange. If all parties are agreeable to having the case decided on the written record, they shall submit a joint statement to that effect.

Given the statutory time period, the time allotted to a hearing in this matter is limited. Therefore, direct testimony of witnesses will only be allowed by verified written statements provided in advance of the hearing. The proponent of a witness’s verified written statement must ensure that the witness is available for cross-examination in-person at the hearing unless the opposing party waives such requirement in writing.

Intervention and Amicus Curiae. Leave to intervene will be freely granted, per 40 C.F.R. § 164.31(c). Motions for leave to intervene must be filed no later than **June 13, 2022**, and be accompanied with any primary discovery materials as outlined below.

Persons who do not request to intervene but would like to file briefs may do so by filing a motion for leave to file an *amicus curiae* brief together with the brief by **June 13, 2022**.

Hearing. The hearing in this matter will be held beginning promptly at 9:00 a.m. ET on **Wednesday, July 6, 2022**, and continue as necessary through **Friday, July 8, 2022**. The hearing will take place at:

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

Scope of the Hearing. The scope of a hearing challenging the proposed suspension of a registered pesticide under FIFRA Section 3(c)(2)(B)(iv), 7 U.S.C. § 136a(c)(2)(B)(iv), is strictly

limited to two narrow issues: (1) “whether the registrant has failed to take the action that served as the basis for the notice of intent to suspend the registration of the pesticide for which additional data is required” and (2) “whether the Administrator’s determination with respect to the disposition of existing stocks is consistent with [FIFRA].”

Primary Discovery. Although the Rules of Practice contemplate a formal prehearing conference, I do not find one necessary at this time. *See* 40 C.F.R. § 164.50(a), (d). Rather, the parties shall engage in the following prehearing exchange of primary discovery materials:

Each party shall file with the Headquarters Hearing Clerk, serve on all other parties, and serve on the undersigned:

- (A) a list of names of all expert and other witnesses it intends to call at hearing, identifying each either as a fact witness or an expert witness, and including a curriculum vitae or resume for each identified expert witness, or, in lieu of the foregoing, a statement that no witnesses will be called;
- (B) for each witness (fact and expert) identified, a verified written statement to serve as that witness’s direct testimony;
- (C) a list and copies of all documents and exhibits intended to be introduced into evidence, identified as “Respondent’s Exhibit,” “Petitioner [Name]’s Exhibit,” “Intervenor [Name]’s Exhibit, as appropriate, and numbered sequentially with Arabic numerals (e.g., “PAX 1” for “Petitioner AMVAC Chemical Corporation’s Exhibit 1”);²
- (D) a list of any matters of which the party requests official notice be taken;
- (E) a statement of whether interpretation services are necessary with respect to the testimony of any witness(es), and, if so, the language to be interpreted.

The prehearing exchanges called for above shall be filed by **June 17, 2022**.

Section 164.50(b) of the Rules of Practice provides that documents, exhibits and witness testimony not included in the prehearing exchanges may not be added or amended except upon motion. Therefore, each party should very thoughtfully prepare its prehearing exchange.

² The Rules of Practice define the “Respondent” as “the Assistant Administrator of the Office of Chemical Safety and Pollution Prevention.” 40 C.F.R. § 164.2(s). Furthermore, “[t]he term *Petitioner* means any person adversely affected by a notice of the Administrator who requests a public hearing.” *Id.* § 164.2(o).

Motions. *Prior to filing any motion, the moving party must contact all other parties to determine whether any other party has any objection to the granting of the relief sought in the motion, and the motion shall state the positions of the other parties.* The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response by the other parties and/or the issuance of a ruling on the motion before any relevant deadline set by this or any subsequent order. The 10-day response period for motions with an additional 3 days added thereto if the document is served by mail provided for in Sections 164.60 and 164.6 of the Rules of Practice is impractical given the limited amount of time available to issue a determination. Therefore, parties will be provided only **seven calendar days** to respond in writing to any dispositive motions, and only **three calendar days** to respond to motions that are not dispositive. Respondent may file a motion for accelerated decision no later than **June 13, 2022**. See 40 C.F.R. § 164.91(a). Respondent may file a reply brief supporting its dispositive motion, if necessary, no later than three *business* days after the filing of the response to its motion. Parties shall make every effort to serve motions by the most expeditious means possible to ensure prompt receipt. Motions not filed and served in a timely manner may not be considered. There will be no oral argument on motions filed prior to the hearing.

Due to the narrow scope of the hearing and the statutory time limit within which an Agency determination must be made (including ruling upon any appeal to the Environmental Appeals Board), motions requesting additional discovery or extensions of time will not be granted absent extraordinary circumstances.

Post-hearing Briefs. After the conclusion of the hearing, any party may file a brief summarizing its position and the admitted evidence in support of its position. The post-hearing briefs shall be limited to fifteen one-sided pages in length, with 12-point font and one-inch margins. The post-hearing brief shall be filed no later than **July 15, 2022**.

Filing and Service. The original and two copies of any documents filed in this proceeding, including prehearing exchange information and motions, shall be filed with the Headquarters Hearing Clerk, per 40 C.F.R. § 164.5(c). Electronic filing is strongly encouraged.³ To file a document electronically, a party shall use a web-based tool known as the OALJ E-Filing System by visiting the OALJ's website at www.epa.gov/alj. Documents filed electronically are deemed to constitute both the original and the two copies of the document.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. **There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system.**

A document submitted to the OALJ E-Filing System is considered "filed" at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon

³ More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges available on the OALJ's website at <https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-e-filing.pdf>.

reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the Judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.⁴

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.⁵ Electronically filed textual documents must be in Portable Document Format (“PDF”). A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of a party’s prehearing exchange, should be filed separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable.

The use of the OALJ E-Filing System constitutes consent to the service of orders by electronic mail to the email address used to register for the OALJ E-Filing System.

NOTE: The OALJ E-Filing System is not designed to protect the privacy of any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”), and whenever a document is filed electronically, the undersigned will consider all confidentiality claims *waived*.

Attached to this Order is further guidance on the use of the OALJ E-Filing System for purposes of electronic filing.

Alternatively, if a party is unable to file a document utilizing the OALJ E-Filing System, e.g., the party lacks access to a computer, the party may file the document by U.S. mail or facsimile.⁶ U.S. mail is currently being delivered to this Tribunal at an offsite location on a

⁴ The emailed electronic receipt will be the filing party’s only proof that the OALJ received the submitted document. The absence or presence of a document on the OALJ’s E-Docket Database webpage, available at https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf, is not proof that the document was or was not received. If the filing party does not receive an electronic receipt within one hour after submitting the document through the OALJ E-Filing System, the Headquarters Hearing Clerk may be able to confirm receipt of the document but not earlier than one hour after the document was submitted.

⁵ If a party’s multimedia file exceeds 70 megabytes, the party may contact the Headquarters Hearing Clerk at (202) 564-6281 for instructions on alternative electronic filing methods.

⁶ Because of the ongoing COVID-19 pandemic, this Tribunal’s ability to receive filings and correspondence by U.S. mail and facsimile is limited. If a party is without access to a computer and must file documents by U.S. mail or facsimile, the party shall notify the Headquarters Hearing Clerk *every time* it files a document in such a manner by calling the Headquarters Hearing Clerk at (202) 564-6281. At this time, the Tribunal is not able to accept filings or correspondence by courier or commercial delivery service, such as UPS, FedEx, and DHL. Likewise, the physical office of the OALJ is not currently accessible to the public, and the Tribunal is not able to receive documents by personal delivery. *See* Order Urging Electronic Service and Filing (April 10, 2020), *available at*

weekly basis only, and documents sent by facsimile will also be received offsite. A document submitted by U.S. mail is considered timely if it is postmarked on the due date except as to initial filings requesting a hearing. To file a document using U.S. mail, the document shall be sent to the following mailing address:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave. NW
Mail Code 1900R
Washington, DC 20460

Facsimile may be used to file a document if it is fewer than 20 pages in length. To file a document using facsimile, the document shall be sent to this Tribunal's offsite location at (916) 550-9639. A document submitted by facsimile is considered "filed" when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document.

Regardless of the method of filing, all filed documents must be signed and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

A copy of each document filed in this proceeding shall also be "served" by the filing party on the presiding judge and on all other parties. 40 C.F.R. § 164.5(a). Documents filed electronically through the OALJ E-Filing System are deemed to have been served electronically on the presiding judge. To serve a document on the presiding judge by U.S. mail or facsimile, the mailing address or facsimile number listed above shall be used. Documents may not be served on any party using the OALJ E-Filing System. Documents may be served on parties by first-class (including certified) or priority mail, personal delivery, reliable commercial delivery service, or email if the party being served has provided a valid email address in the record. For service on parties, a document is considered "served" upon mailing, when placed in the custody of a reliable commercial delivery service, or upon electronic transmission. This Tribunal strongly encourages parties to serve all documents on opposing parties by electronic means only. *See Order Urging Electronic Service and Filing (April 10, 2020).*

Every filed document must show how and when the document was filed with the Headquarters Hearing Clerk and how and when the document was served on the presiding judge and each other party. This showing may be made through a written statement or Certificate of Service, an example of which is attached to this Order. 40 C.F.R. § 164.5(a).

If a document is filed other than through the OALJ E-Filing System, the parties are requested to send a courtesy copy via email to OALJ's Staff Attorneys, Matt Barnwell and Alyssa Katzenelson, at barnwell.matt@epa.gov and katzenelson.alyssa@epa.gov, respectively.

https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.


The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the undersigned, and no copies of settlement agreements shall be submitted, or attached to any document submitted, to the undersigned except those that are fully executed and filed with the Headquarters Hearing Clerk.

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the OALJ will be made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) pertaining to any person. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

Where filing of such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. *To the extent that any person files or submits any unredacted CBI (except in accordance with 40 C.F.R. Part 2) or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. Submission of such information through the OALJ E-Filing System will also be considered a waiver of confidentiality. To protect such information against public disclosure, parties must follow the procedures specified on the OALJ’s website at www.epa.gov/alj and in 40 C.F.R. Part 2.*

Contact Information. The Headquarters Hearing Clerk, Mary Angeles, may be contacted at (202) 564-6281 or angeles.mary@epa.gov to verify that a document has been received. For procedural questions, you may contact OALJ’s Staff Attorneys, Matt Barnwell and 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. Bird
Chief Administrative Law Judge


Dated: June 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 **Order Scheduling Hearing and Prehearing Procedures**, dated June 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.


Alyssa Katzenelson
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

Copy by Electronic Mail to:
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
Attorney for Respondent

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Attorney for Petitioner "Grower Group"
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*Attorneys for Petitioner AMVAC Chemical
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Dated: June 3, 2022
Washington, D.C.

**OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C.

GUIDANCE ON USE OF OALJ E-FILING SYSTEM

The Office of Administrative Law Judges (“OALJ”) utilizes a web-based tool known as the OALJ E-Filing System to allow registered users to file documents electronically. Sending a document to oaljfilng@epa.gov or an email address of a staff member within the OALJ is not a valid method of electronic filing, unless otherwise specified in writing by the presiding Administrative Law Judge. The OALJ E-Filing System is accessible at www.epa.gov/alj. Documents filed electronically are deemed to constitute both the original and the requisite copies of the document, and are deemed to have been both filed with the Headquarters Hearing Clerk and served electronically on the presiding Administrative Law Judge.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system. Parties are advised to plan accordingly.

To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed, unless another time is specified by the presiding Administrative Law Judge. Immediately upon reception by the OALJ E-Filing System, the document will be marked with the official filing date and time. The OALJ E-Filing system will then generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay of approximately one hour between submission of the document and transmission of the electronic receipt.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes. Electronically filed textual documents must be in Portable Document Format (“PDF”).

A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of a party’s prehearing exchange of information, should be submitted separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. For example, where a party is filing copies of 12 proposed exhibits as part of its prehearing exchange, those 12 proposed exhibits

should be submitted together as one attachment consisting of a single electronic file, to the extent technically practicable.

The OALJ E-Filing System is not equipped either to accommodate or to protect the privacy of confidential business information (“CBI”) or sensitive personally identifiable information (“PII”) that could be used to identify or trace an individual, such as Social Security numbers, medical records, or personal financial information. If a party wishes to electronically file a document containing such information, the party shall redact (i.e., remove or obscure) that information from the document before filing the redacted version of the document through the OALJ E-Filing System. If the party wishes for the presiding Administrative Law Judge to consider the CBI or PII contained in the document, the party shall also file a paper copy of the unredacted version of the document by means other than the OALJ E-Filing System, in accordance with the procedures specified on the OALJ’s website at www.epa.gov/alj. To the extent that any person files any un-redacted CBI or PII through the OALJ E-Filing System, that person thereby waives any claims to confidentiality and consents to public disclosure of all such information.