



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In re FIFRA Section 6(b) Notice of Intent to Cancel Pesticide Registrations for Chlorpyrifos Products
Gharda Chemicals International, Inc. and Red River Valley Sugarbeet Growers Association, et al.,
Petitioners.

Docket No. FIFRA-HQ-2023-0001

ORDER ON RESPONDENT’S MOTION FOR EXTENSION OF TIME AND ORDER TO SHOW CAUSE

This matter relates to the U.S. Environmental Protection Agency’s (“Respondent’s” or “Agency’s”) Notice of Intent to Cancel Pesticide Registrations for chlorpyrifos, which the Agency published to the Federal Register on December 14, 2022. Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations, 87 Fed. Reg. 76474-02 (Dec. 14, 2022) (“NOIC”), JX 1. Through the NOIC, the Agency proposed to cancel three pesticide product registrations for products containing the insecticide chlorpyrifos (the “Contested Registrations”)1 “due to the revocation of all chlorpyrifos tolerances” effected by the Agency’s August 30, 2021, Final Rule titled Chlorpyrifos; Tolerance Revocations and the Agency’s subsequent Final Order denying all objections, hearing requests, and stay requests related to the tolerance revocations. JX 1 at 3 (citing Chlorpyrifos; Tolerance Revocations, 86 FR 48315 (August 30, 2021), JX 3 (the “Final Rule”); and Chlorpyrifos; Final Order Denying Objections, Requests for Hearings, and Requests for a Stay of the August 2021 Tolerance Final Rule 87 FR 11222 (Feb. 28, 2022), JX 2 (the “Denial Order”).

Petitioners objected to the NOIC and requested a hearing pursuant to Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136-136y, “FIFRA”) to contest the registrations’ cancellation. Gharda’s Request for Hearing & Statement of Objections & Request for Stay (Jan. 13, 2023) (“Gharda Hr’g Request”); Grower Petitioners’ Request for Hearing & Statement of Objections (Jan. 13, 2023) (“Grower Hr’g Request”). Among other objections, Petitioners argued that cancellation should await the outcome of their ongoing appeal of the Final Rule to the U.S. Circuit Court of Appeals for the Eighth Circuit, Red River Valley Sugarbeet Growers Ass’n v. Regan (RRVSGA), Nos. 22-1422, 22-1530 (8th Cir.). Gharda Hr’g

1 The Contested Registrations include:
• EPA Reg. No. 93182–3 Chlorpyrifos Technical,
• EPA Reg. No. 93182–7 Pilot 4E Chlorpyrifos Agricultural Insecticide, and
• EPA Reg. No. 93182–8 Pilot 15G Chlorpyrifos Agricultural Insecticide.

Request 5–6; Grower Hr’g Request 1–4. In that appeal, Petitioners here asked the Eighth Circuit to vacate the Final Rule and restore the chlorpyrifos tolerances on the grounds that the Agency had failed to adequately consider the alternative of modifying the tolerances to retain a subset of 11 potentially-safe, “high-benefit” food uses of chlorpyrifos. *See RRVSGA*, No. 22-1422, 2023 WL 7205145, at *3 (8th Cir. Nov. 2, 2023) (outlining case history).

Petitioners’ appeal has now borne fruit: On November 2, 2023, the Eighth Circuit granted the petitions for review in *RRVSGA*, vacated the Final Rule and the Denial Order, and remanded to the Agency for further proceedings. *Id.* at *7. Shortly thereafter, on November 3, 2023, Respondent filed a motion to extend the November 10, 2023, non-dispositive motions deadline in this matter on the grounds that “Respondent requires additional time to consider appropriate next steps in response to the Eighth Circuit’s opinion.” Mot. for Extension of Time to File Non-Dispositive Mots. 1 (Nov. 3, 2023) (“Motion for Extension”).

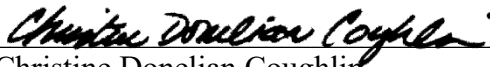
Respondent’s desire for additional time to digest and act upon the Eighth Circuit’s decision in *RRVSGA* is understandable given that the stated basis for the NOIC was the now-vacated Final Rule. Specifically, the NOIC proposed to cancel the Contested Registrations because (i) as a direct result of the Final Rule, no tolerances existed for those registrations, and (ii) without tolerances in place, any food use registrations for chlorpyrifos were unsupportable as a matter of law. *See JX 1* at 3 (“EPA has determined that the [Contested Registrations] must be cancelled because they each bear labeling for use on food crops. Due to the lack of tolerances for residues of chlorpyrifos, these products, (i) pose unreasonable adverse effects on the environment under FIFRA . . . , 7 U.S.C. 136(bb)(2) . . . and (ii) are misbranded and thus not in compliance with FIFRA, 7 U.S.C. 136j(a)(1)(E).”). The Final Rule’s vacatur would seemingly undercut (if not wholly erase) this justification and support denial of cancellation and this action’s dismissal. *See Ctr. for Food Safety v. Regan*, 56 F.4th 648, 660 (9th Cir. 2022) (“When a court orders vacatur, it sets aside or invalidates an agency decision or order.”); *see also Bayer Cropscience LP*, 2016 WL 2759720, at *21 (EPA ALJ Apr. 25, 2016) (Order on Petitioners’ Motion for Accelerated Decision) (finding accelerated decision in petitioners’ favor to be permissible in cancellation proceedings based on Tribunal’s “power to take actions in conformity with statute or in the interests of justice” pursuant to 40 C.F.R. § 164.40(d)).

In short, I agree with the Agency that the Eighth Circuit’s decision in *RRVSGA* renders it necessary to consider the appropriate next steps in this action. Accordingly, the parties are hereby **ORDERED** to file and serve a document, on or before **December 1, 2023**, showing cause as to why this proceeding should not be dismissed and the scheduled hearing cancelled.²

In addition, all prehearing deadlines are hereby held in abeyance pending the parties’ response to this Order to Show Cause and the undersigned’s subsequent decision thereon. Respondent’s Motion for Extension is, in turn, **DENIED as moot**.

SO ORDERED.

² Multiple parties may elect to submit one collective response hereto, or individual responses.


Christine Donelian Coughlin
Administrative Law Judge

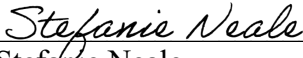
Dated: November 8, 2023
Washington, D.C.

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Gharda Chemicals International, Inc., and Red River Valley Sugarbeet Growers Association, et al., Petitioners

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Respondent's Motion for Extension of Time and Order to Show Cause**, dated November 8, 2023, and issued by Administrative Law Judge Christine D. Coughlin, was sent this day to the following parties in the manner indicated below.


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Dated: November 8, 2023
Washington, D.C.