

**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.)
)**

**PETITIONERS' PRELIMINARY RESPONSE TO MOTION TO INTERVENE
REQUESTING MOTION BE HELD IN ABEYANCE PENDING PETITIONERS'
REQUEST FOR CERTIFICATION AND APPEAL OF ORDER DENYING STAY**

Submitted by:

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Gharda Chemicals International, Inc. (“Gharda”) and Red River Valley Sugarbeet Growers Association, U.S. Beet Sugar Association, American Sugarbeet Growers Association, Southern Minnesota Beet Sugar Cooperative, American Crystal Sugar Company, Minn-Dak Farmers Cooperative, American Farm Bureau Federation, American Soybean Association, Iowa Soybean Association, Minnesota Soybean Growers Association, Missouri Soybean Association, Nebraska Soybean Association, South Dakota Soybean Association, North Dakota Soybean Growers Association, National Association of Wheat Growers, Cherry Marketing Institute, Florida Fruit and Vegetable Association, and Georgia Fruit and Vegetable Growers Association, and National Cotton Council of America (“Growers” and together with Gharda, “Petitioners”) respectfully request that the Administrative Law Judge (“ALJ”) hold in abeyance the Motion to Intervene¹ filed on March 28, 2023, pending review of Petitioners’ forthcoming request for certification of and appeal to the Environmental Appeals Board (“EAB”) of the ALJ’s March 31, 2023 order denying a stay of these proceedings (“Stay Order”). The ALJ stated in the Stay Order that the Growers “have not moved for this Tribunal to stay this proceeding.” Stay Order at 1, n.2. But the Growers contested EPA’s denial of their stay request as part of their objections to the NOIC. The Growers therefore join in this Preliminary Response and intend to join in the forthcoming request for certification and appeal of the Stay Order.

Petitioners have challenged the Final Rule² underlying the Notice of Intent to Cancel (“NOIC”) as arbitrary and capricious, in the lawsuit captioned *Red River Valley Sugarbeet Growers Ass’n et al. v. Regan, et al.*, Nos. 22-1422, 22-1530 (8th Cir.) (the “Lawsuit”), because

¹ The Motion to Intervene was filed on March 28, 2023 by League of United Latin American Citizens, Pesticide Action Network North America, Natural Resources Defense Council, California Rural Legal Assistance Foundation, Farmworker Association of Florida, Farmworker Justice, GreenLatinos, Labor Council for Latin American Advancement, Learning Disabilities Association of America, Pineros y Campesinos Unidos del Noroeste, Alianza Nacional de Campesinas, United Farm Workers, and United Farm Workers Foundation.

² See Chlorpyrifos; Tolerance Revocations, 86 Fed. Reg. 48,315 (Aug. 30, 2021) (“Final Rule”)

the Final Rule revoked all tolerances of chlorpyrifos, even though EPA found that tolerances for a subset of uses meet the aggregate exposure safety standard in the Federal Food, Drug, and Cosmetic Act (“FFDCA”). The Lawsuit has been fully briefed, and oral argument took place on December 15, 2022. A decision by the Eighth Circuit could be issued at any moment and could include vacatur of the Final Rule.

On December 14, 2022, the day before oral argument in the Lawsuit, the U.S. Environmental Protection Agency (“EPA”) issued the NOIC, proposing to cancel Petitioner Gharda’s registrations for chlorpyrifos products. Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations, 87 Fed. Reg. 76,474 (Dec. 14, 2022). Petitioners urged EPA to stay or withdraw the NOIC in correspondence dated January 6, 2023, but EPA denied this request. On January 13, 2023, Petitioners submitted objections to the NOIC, and Gharda also submitted a request for a stay of the NOIC. On February 8, 2023, the ALJ ordered EPA to respond to Gharda’s stay request and expressly disallowed Gharda the opportunity to reply; EPA responded to Gharda’s stay request on February 22, 2023. On March 31, 2023, the ALJ issued the Stay Order denying Gharda’s stay request.

Pursuant to 40 C.F.R. § 164.100, Petitioners intend to request that the ALJ certify the Stay Order for appeal to the EAB because the Stay Order involves an important question of law, and because review of the Stay Order by the EAB after a final judgment is issued by the ALJ (if adverse to Petitioners) would be inadequate or ineffective. In the event certification is not granted, Petitioners would proceed to seek review by the EAB. As long as the Stay Order remains under review, it would be inefficient and a waste of party and Tribunal resources to have further briefing on and consideration of the Motion to Intervene. Moreover, until a decision is made regarding Petitioners’ certification request and appeal of the Stay Order, there is no

prejudice to the proposed-intervenors in having the Motion to Intervene briefed and argued at such time, if any, that it becomes relevant. Indeed, if the EAB reverses the Stay Order and the Eighth Circuit rules in Petitioners' favor in the Lawsuit, the Motion to Intervene would be moot.

For those reasons, Petitioners respectfully request that further briefing on the pending Motion to Intervene be held in abeyance pending Petitioners' request for certification and appeal of the Stay Order. If the ALJ determines that moving forward with briefing on the Motion to Intervene is warranted despite the Petitioners' request for certification and appeal of the Stay Order, Petitioners respectfully request that the ALJ set a briefing schedule on the Motion to Intervene. Petitioners propose that Petitioners be allowed 15 days from the date of the Tribunal's determination on this preliminary response to respond to the Motion.

This 6th day of April, 2023,

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Association, Iowa Soybean Association, Minnesota
Soybean Growers Association, Missouri Soybean
Association, Nebraska Soybean Association, South
Dakota Soybean Association, North Dakota Soybean*

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Growers, Cherry Marketing Institute, Florida Fruit and
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America*

CERTIFICATE OF SERVICE

I hereby certify that on April 6th, 2023, true and correct copies of the foregoing Preliminary Response to Motion to Intervene was filed electronically with the EPA OALJ E-Filing System for the OALJ's E-Docket Database, with a copy via electronic mail to the following:

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