



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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

Docket No. FIFRA-HQ-2023-0001

ORDER GRANTING MOTION TO INTERVENE

This matter relates to the U.S. Environmental Protection Agency’s (“Agency’s”) Notice of Intent to Cancel Pesticide Registrations for chlorpyrifos. Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations, 87 Fed. Reg. 76474-02 (Dec. 14, 2022) (“NOIC”). On January 13, 2023, Petitioners filed objections 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 Chemicals International, Inc.’s Request for Hearing & Statement of Objections & Request for Stay (Jan. 13, 2023) (“Gharda Hearing Request”); Grower Petitioners’ Request for Hearing & Statement of Objections (Jan. 13, 2023) (“Grower Hearing Request”).

On March 28, 2023, a group of 13 nonprofit organizations (the “Proposed Intervenors”) filed a Motion to Intervene in this proceeding. Motion to Intervene (Mar. 28, 2023) (“Motion”).¹ On April 6, 2023, Petitioners filed a submission titled Petitioners’ Preliminary Response to Motion to Intervene Requesting Motion be Held in Abeyance Pending Petitioners’ Request for Certification and Appeal of Order Denying Stay (the “Request”), through which they requested a stay of the Motion or an extended deadline to file their full response. On April 10, 2023, I issued an order denying Petitioners’ Request and directing Petitioners to file any more fulsome response by April 12, 2023. Order on Petitioners’ Request to Hold in Abeyance Motion to Intervene or for Briefing Schedule (Apr. 10, 2023). Petitioners then filed a timely brief in opposition to the Motion. Petitioners’ Opposition to Motion to Intervene (Apr. 12, 2023) (“Opposition”). For the reasons that follow, the Motion is **GRANTED**.

¹ The Motion identifies the following organizations as Proposed Intervenors: 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.

I. Legal Standard

The procedural rules that apply to this FIFRA cancellation matter, 40 C.F.R. pt. 164 (“Rules of Practice”), provide that “[l]eave to intervene will be freely granted but only insofar as such leave raises matters which are pertinent to and do not unreasonably broaden the issues already presented.” 40 C.F.R. § 164.31(c). The Rules of Practice also require prospective intervenors to “set forth the grounds for the proposed intervention, [as well as] the position *and interest* of the movant in the proceeding.” § 164.31(a) (emphasis added). The latter requirement suggests that prospective intervenors’ interest in the proceeding has at least some bearing on whether intervention should be allowed.²

II. Party Arguments

Proposed Intervenors argue that they have compelling grounds for intervention (i) to protect the current ban on chlorpyrifos’s food use, which was achieved in significant part through their advocacy; (ii) because their core missions are tied to ending chlorpyrifos’s food use and preventing its harms; and (iii) because their positions are pertinent to this matter and would not unduly broaden the issues presented. Mot. 8–14.

As to their positions, Proposed Intervenors plan to argue that (i) Petitioners’ arguments regarding chlorpyrifos’s agricultural and economic value are irrelevant to these cancellation proceedings and (ii) the NOIC is an appropriate and legally “automatic” result of the Agency’s Final Rule revoking all chlorpyrifos food tolerances, Chlorpyrifos: Tolerance Revocations, 86 Fed. Reg. 48315 (Aug. 30, 2021) (the “Final Rule”). Mot. 12–14. Proposed Intervenors also argue that while Petitioners may not lawfully challenge the Final Rule’s legality in this forum, should they nevertheless be allowed to do so, Proposed Intervenors have arguments to offer on that front beyond those the Agency has presented. Mot. 13–14.

Petitioners object that Proposed Intervenors’ involvement would unreasonably broaden the issues presented by this action because the Proposed Intervenors plan to raise arguments related to the Final Rule—namely “that EPA’s use of an under protective regulatory endpoint in the Final Rule contravenes FQPA’s health-based safety standard.” Opp’n 4–5 (quoting Mot. 9).

Petitioners also object to intervention on the grounds that Proposed Intervenors lack “standing” to intervene. Opp’n 6. Petitioners note that because the Final Rule revoked all chlorpyrifos tolerances, it is already illegal to engage in food use of chlorpyrifos. Opp’n 6. Thus, Petitioners say, Proposed Intervenors’ evidence of their interest in preventing chlorpyrifos’s food use is not relevant here. Opp’n 6.

² The Rules of Practice also specify that motions to intervene “must ordinarily be filed prior to the commencement of the first prehearing conference” and “must set forth . . . the documents proposed to be filed pursuant to either § 164.22 or § 164.24.” 40 C.F.R. §§ 164.31(a), (b). Proposed Intervenors have satisfied those particular procedural requirements to intervene. The Motion was timely filed, and Proposed Intervenors correctly observe that they were not required to file the referenced documents given the posture of this case. Mot. 14–15 (noting that because Proposed Intervenors support cancellation, they do not intend to file objections under 40 C.F.R. § 164.22 and that because this proceeding was initiated by Petitioners rather than the Agency’s Administrator, there is no § 164.24 Statement of Issues to which Petitioners may respond).

III. Analysis

Proposed Intervenors have met the standard for intervention. Most saliently, Proposed Intervenors have raised matters that are pertinent to and do not unreasonably broaden the issues already presented in this proceeding. As noted, Proposed Intervenors plan to refute Petitioners' arguments regarding chlorpyrifos's agricultural and economic value and to argue that the NOIC is supported by statute. Mot. 8–14. These arguments closely align with the Agency's position in this case and are pertinent to issues raised by Petitioners' Objections. *See, e.g.*, NOIC at 76457, 76477 (outlining Agency position that revocation of chlorpyrifos tolerances leaves NOIC justified as matter of law); Gharda Hr'g Req. 7 (objecting to NOIC on grounds that Agency failed to consider agricultural and economic impact of cancellation and failed to follow various required procedural steps before issuing NOIC); Grower Hr'g Req. 11–19 (objecting to NOIC on grounds that Agency failed to consider economic and agricultural impact of cancellation). Indeed, while Proposed Intervenors may bring a novel perspective or approach to their arguments, the close alignment between Proposed Intervenors' position and the Agency's demonstrates that Proposed Intervenors' involvement will not overly broaden the issues presented. Further, I agree that Proposed Intervenors retain here their interest in seeing through the permanent end to chlorpyrifos's food use—an aim they have been pursuing for over a decade. *See, e.g.*, Mot. 2, 5–8 (outlining history of Proposed Intervenors' involvement in revocation of chlorpyrifos food use tolerances and subsequent defense of revocation); *League of United Latin Am. Citizens v. Regan (LULAC II)*, 996 F.3d 673, 682–690 (9th Cir. 2021) (same).

Petitioners' objections are not persuasive. First, in arguing that Proposed Intervenors' involvement will expand the scope of issues in this case, Petitioners ignore significant portions of the Motion. While Petitioners are correct that the Motion outlines certain proposed arguments in support of the Final Rule, Opp'n 4–5, Proposed Intervenors make explicit that they will raise those arguments only if this Tribunal elects to consider the Final Rule's legality. Mot. 9 (“[I]f the ALJ permits Gharda and the Growers' challenge to the Final Rule's legality in this proceeding, Proposed Intervenors will argue that EPA's use of an under protective regulatory endpoint in the Final Rule contravenes the FQPA's health-based safety standard.”) (emphasis added); *Id.* at 14 (“[I]f the ALJ permits Gharda and the Growers to argue the validity of the Final Rule in this proceeding, Proposed Intervenors will present the same arguments they presented in their unaddressed objections to the Final Rule.”) (emphasis added). As I stated in my Order on Petitioner Gharda Chemicals International, Inc.'s Motion to Stay this proceeding, the Final Rule is currently the subject of an appeal before the Eighth Circuit. Therefore, even if it would ordinarily have had the authority to do so (a point Petitioners assume without support), this Tribunal cannot now adjudicate any issues related to the Final Rule's legality. Order on Petitioner Gharda Chemicals International, Inc.'s Motion to Stay 6 (Mar. 31, 2023); *see also* 21 U.S.C. § 346a(h)(1), (2) (once a petition for review of a final agency order revoking tolerances “or any regulation that is the subject of such an order” has been filed with the appropriate Circuit Court, “the court shall have *exclusive jurisdiction* to affirm or set aside the order or regulation complained of in whole or in part”) (emphasis added); 21 U.S.C. § 346a(h)(5) (“Any *issue* as to which review is or was obtainable under this subsection shall not be the subject of judicial review under any other provision of law.”) (emphasis added). There is, therefore, no present risk that Proposed Intervenors will be required to raise their alternative arguments.

I also disagree with Petitioners that Proposed Intervenors lack standing to intervene. Petitioners argue that Proposed Intervenors cannot claim an interest in this proceeding based on their desire to halt food use of chlorpyrifos because the Final Rule already ended that use. Opp'n 6. Petitioners' argument ignores their own positions in this case, among them that (1) wholesale cancellation of chlorpyrifos (as opposed to modification of existing registrations) is improper given the pesticide's agricultural and economic value, and (2) cancellation should await the outcome of related Eighth Circuit litigation because the Eighth Circuit's ruling might permit use of the noticed products to resume immediately. Gharda Hr'g Req. 6, 8-9; Grower Hr'g Req. 8-19. The Motion and its accompanying Exhibits demonstrate Proposed Intervenors' interest in securing a permanent halt to all chlorpyrifos food use. Mot. 5-6, 10-12. Proposed Intervenors' relevant interests therefore include making sure the chlorpyrifos food uses that are the subject of the NOIC cannot automatically be restarted if, for example, the Eighth Circuit vacates the Final Rule and remands it to the Agency for further safety findings. That Petitioners might disapprove of Proposed Intervenors' desired outcome or believe it to be misguided does not vitiate Proposed Intervenors' supported interest in pursuing that outcome.

For the foregoing reasons, Proposed Intervenors' Motion is **GRANTED**. Pursuant to 40 C.F.R. § 164.31(c), now-Intervenors are thus rendered "part[ies] with the full status of the original parties to the proceedings," and will be treated accordingly for purposes of their participation and service.

SO ORDERED.



Christine Donelian Coughlin
Administrative Law Judge

Dated: May 22, 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 Granting Motion to Intervene**, dated May 22, 2023, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.

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Dated: May 22, 2023
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