



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.,**)
)
)
Petitioners.)

Docket No. FIFRA-HQ-2023-0001

**ORDER ON PETITIONERS’ REQUEST TO HOLD IN ABEYANCE
MOTION TO INTERVENE OR FOR BRIEFING SCHEDULE**

BACKGROUND

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, Petitioner Gharda Chemicals International, Inc. (“Gharda”) and a group of grower organizations styled the “Grower Petitioners” each 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’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).

In connection with its Hearing Request, Gharda moved to stay this proceeding pending the outcome of related litigation before the U.S. Court of Appeals for the Eighth Circuit. Gharda Hr’g Req. 12–13. I denied Gharda’s stay motion on April 3, 2023. Order on Petitioner Gharda Chemicals International, Inc.’s Motion to Stay (Apr. 3, 2023) (“Stay Order”).

In the interim, on March 28, 2023, a group of 13 nonprofit organizations filed a Motion to Intervene in this proceeding (the “Motion”). Motion to Intervene (Mar. 28, 2023).¹ Pursuant

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.

to the Rules of Practice that govern this action, 40 C.F.R. pt. 164, absent an order setting an alternative deadline, Gharda and the Grower Petitioners (collectively, “Petitioners”) were required to file any response to the Motion within ten days of service, or by April 7, 2023. 40 C.F.R. § 164.60(b).

Late on the eve of that deadline, 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 Denying Stay (the “Request”).² Through their Request, Petitioners ask that I hold the Motion in abeyance pending Petitioners’ planned efforts to appeal my Stay Order. Request 4. In the alternative, Petitioners ask that I set a “briefing schedule” for the Motion that provides them 15 days from the date of my decision on the request for abeyance to submit a full response to the Motion. Request 4.

Petitioners cite no legal authority in support of either request, nor do Petitioners outline any cause for me to grant their request to extend their response deadline by more than two weeks. *See generally* Request. Petitioners do attempt to justify their request for abeyance, arguing that I should hold off on considering the Motion because it may be mooted by Petitioners’ as-yet-unfiled appeal and because the Proposed Intervenors will not be prejudiced by the delay. Request 3–4.

DISCUSSION

Petitioners’ request to hold the Motion in abeyance is DENIED.

Petitioners have not identified the authority under which they believe I may hold the Motion in abeyance indefinitely. *See generally* Request. If Petitioners mean to seek a stay of this matter pending appeal (assuming they may do so before said appeal exists), they have failed to meet the standard for such a stay. The Rules of Practice provide that “proceedings will not be stayed pending an interlocutory appeal” “[e]xcept in extraordinary circumstances.” 40 C.F.R. § 164.100. Petitioners identify no such circumstances. The possibility that Petitioners may need to file a single brief on a limited issue that might or might not become moot does not qualify.

If Petitioners mean to invoke my general authority “to take actions and decisions [in this matter] . . . in the interests of justice,” 40 C.F.R. § 164.40(d), I am not persuaded that the requested relief would serve that aim. Petitioners’ request for abeyance is predicated on an appeal they have yet to file, creating the possibility that, through Petitioners’ own delay, a decision on the Motion could be postponed for a significant period. More importantly, as my Stay Order reflects, I have already found that good cause exists for this action to proceed expeditiously. *See* Stay Order 2, 6–7 (noting, *inter alia*, that the Ninth Circuit has unambiguously directed the Agency to modify or cancel the FIFRA registrations for chlorpyrifos products like those listed in the NOIC “in a timely fashion”).

Petitioners’ alternative request for relief—i.e., that they be allowed 15 days from the date of this order to file a full response to the Motion—is likewise DENIED. The Rules of Practice

² Per the Motion’s certificate of service, Petitioners served their request not on counsel of record for the Agency, but on the Director of the Pesticide Re-Evaluation Division in the Office of Pesticide Programs. Going forward, Petitioners should effect service on the Agency in this matter via Agency counsel.

provide that, absent an order stating otherwise, responses to motions must be filed within ten days of service of the subject motion. 40 C.F.R. § 164.60(b). The Rules of Practice further provide:

When by these rules . . . an act is required or allowed to be done at or within a specified time, the Administrative Law Judge (before his initial decision is filed) . . . for cause shown may at any time in their discretion: with or without motion or notice, order the period enlarged if request therefor . . . is made before the expiration of the period originally prescribed.

40 C.F.R. § 164.6(b). Here, as noted above, Petitioners offer no cause for an enlargement of the prescribed period for responding to the Motion. Petitioners' apparent assumption that they may skirt the Rules' response deadline through the filing of a "preliminary" response is in error. Going forward, Petitioners are advised to comply with the Rules of Practice and to submit any scheduling motions reasonably in advance of the applicable deadline.

Nevertheless, cognizant that the applicable Response deadline has now passed and in the interest of obtaining meaningful briefing, I will permit Petitioners a short amount of additional time to prepare and file their substantive Response. To wit: Petitioners are hereby **ORDERED** to file any substantive response to the Motion **no later than this Wednesday, April 12, 2023.**

SO ORDERED.



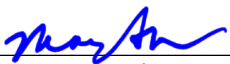
Christine Donelian Coughlin
Administrative Law Judge

Dated: April 10, 2023
Washington, D.C.

In re FIFRA Section 6(b) Notice of Intent to Cancel Pesticide Registrations for Chlorpyrifos Products, Docket No. FIFRA-HQ-2023-0001
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 Petitioners' Request to Hold in Abeyance Motion to Intervene or for Briefing Schedule**, dated April 10, 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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Paralegal Specialist

Copy by OALJ E-Filing System to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

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For the Agency

Dated: April 10, 2023
Washington, D.C.