

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN SOYBEAN ASSOCIATION
and PLAINS COTTON GROWERS,

Plaintiffs,

v.

MICHAEL S. REGAN,
MARIETTA ECHEVERRIA, and
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendants,

and

BASF CORPORATION,
BAYER CROPSCIENCE LP, and
SYNGENTA CROP PROTECTION, LLC

Defendant-Intervenors.

Civil Action No. 1:20-cv-03190 (RCL)

**DEFENDANT- INTERVENOR BASF CORPORATION'S ANSWER TO
AMENDED COMPLAINT**

Pursuant to Rule 15(a)(3) of the Federal Rules of Civil Procedure, Defendant-Intervenor BASF Corporation submits this Answer to Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief, Dkt. No. 50.

INTRODUCTION

1. Admitted.
2. Admitted.

3. BASF admits generally that herbicide-resistant weeds are a challenge for farmers and that dicamba and DT crops are critical weapons for farmers in their fight against these weeds.

4. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4.

5. BASF admits that on October 27, 2020, EPA granted registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) approving use of dicamba on dicamba-tolerant (“DT”) soybeans and cotton and imposing conditions on those uses.

6. BASF admits the first sentence of Paragraph 6. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 6.

7. BASF admits that some conditions included in the new registrations are more stringent than those found in prior registrations. BASF lacks knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 7.

8. Paragraph 8 characterizes this lawsuit and accordingly does not require a response.

PARTIES

9. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9, which concern the interests and actions of Plaintiffs.

10. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, which concern the interests and actions of Plaintiffs.

11. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, which concern the interests and actions of Plaintiffs.

12. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, which concern the interests and actions of Plaintiffs.

13. Admitted.

14. Admitted.

15. Admitted.

JURISDICTION AND VENUE

16. BASF admits that this Court has subject matter jurisdiction over Plaintiffs' claims under 7 U.S.C. § 136n(a), because the October 27, 2020 registration orders were final agency actions not following a "public hearing." BASF further informs the Court that after this action was filed on November 4, 2020, other actions involving the same October 27, 2020 registration orders were filed in other courts. Plaintiffs American Soybean Association and Plains Cotton Growers (together, the "Growers") filed protective petitions in the D.C. Circuit and Fifth Circuit Courts of Appeal, respectively, to preserve their ability to bring their claims if it is subsequently determined that there was a "public hearing" and thus that the Courts of Appeal have exclusive jurisdiction over their claims under 7 U.S.C. § 136n(b).¹ The National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity, and Pesticide Action Network North America (the "NGOs") filed a petition for review in the Ninth Circuit on December 21, 2020 seeking to have the October 27, 2020 registrations found unlawful and vacated.² By Order of the

¹ See Petition for Review, *Am. Soybean Ass'n v. Wheeler*, 20-1441 (D.C. Cir. Nov. 5, 2020); Petition for Review, *Am. Soybean Ass'n v. Wheeler*, 20-1445 (D.C. Cir. Nov. 10, 2020); Petition for Review, *Plains Cotton Growers v. Wheeler*, 20-61055 (5th Cir. Nov. 13, 2020). American Soybean Association apparently filed two protective petitions because of uncertainty over how soon petitions for review can be filed pursuant to 40 C.F.R. § 23.6 and 7 U.S.C. § 136n(b). Plains Cotton Growers filed their protective petition in the Fifth Circuit because they do not reside or have a place of business within the D.C. Circuit. 7 U.S.C. § 136n(b).

² See Petition for Review, *National Family Farm Coalition v. EPA*, 20-73750 (9th Cir. Dec. 21, 2020).

Judicial Panel on Multidistrict Litigation, those petitions have all been transferred to and consolidated in the D.C. Circuit.³ On December 23, 2020, the NGOs filed an action in the U.S. District Court for the District of Arizona, seeking to have the October 27, 2020 registrations found unlawful and vacated.⁴ Unopposed motions for abeyance filed by the Federal Defendants were granted in all three pending actions, with this action held in abeyance until April 6, 2021 and the actions pending in the Arizona District Court and the D.C. Circuit Court held in abeyance until April 9, 2021.⁵ In the D.C. Circuit, the registrants and Growers moved to stay the consolidated petitions while this action proceeds and Federal Defendants moved to dismiss the petitions on grounds that there is no jurisdiction in the courts of appeals under 7 U.S.C. § 136n(b) due to the lack of a “public hearing” on the October 27, 2020 registration orders.⁶ The NGOs, without stating a position on the jurisdictional question, moved to transfer the consolidated petitions back to the Ninth Circuit.⁷ The NGOs filed an amended complaint in the Arizona action on May 3, 2021.⁸

17. Paragraph 17 states conclusions of law, to which no response is required.

³ See Notice of Consolidation Order, *Am. Soybean Ass’n v. Wheeler*, 20-1441 (D.C. Cir. Dec. 3, 2020); *Id.*, Order (Feb. 2, 2021); Clerk Order, *Plains Cotton Growers v. Wheeler*, 20-61055 (5th Cir. Dec. 3, 2020); Order, *National Family Farm Coal. v. EPA*, 20-73750 (9th Cir. Jan. 26, 2021).

⁴ See Complaint, *Ctr. for Biological Diversity v. EPA*, 4:20-cv-555-DCB, Dkt. No. 1 (D. Ariz. Dec. 23, 2020).

⁵ Order, *Am. Soybean Ass’n v. Wheeler*, No. 1:20-cv-3190-RCL, Dkt. No. 37 (D.D.C. Feb. 5, 2021); Order, *Am. Soybean Ass’n v. Wheeler*, 20-1441 (D.C. Cir. Feb. 8, 2021); Order, *Ctr. For Biological Diversity v. EPA*, 4:20-cv-555-DCB (D. Ariz. Feb. 8, 2021).

⁶ BASF, Bayer, and Syngenta Mot. to Govern Further Proceedings, *Am. Soybean Ass’n v. Wheeler*, 20-1441 (D.C. Cir. April 22, 2021); *Id.*, Growers’ Mot. to Govern Further Proceedings (April 23, 2021); *Id.*, Federal Defendants’ Mot. to Dismiss (Apr. 23, 2021).

⁷ *Id.*, NGOs’ Mot. to Transfer Case (Apr. 22, 2021).

⁸ Amended Complaint, *Ctr. For Biological Diversity v. EPA*, 4:20-cv-555-DCB, Dkt. No. 25 (D. Ariz. May 3, 2021).

18. BASF admits that this Court has personal jurisdiction over Administrator Regan, Acting Division Director Echeverria, and EPA.

19. BASF admits that venue is proper in this District.

STATUTORY AND REGULATORY FRAMEWORK

A. The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”)

20. The first sentence of Paragraph 20 states a conclusion of law, to which no response is required. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 20.

21. Paragraph 21 states a conclusion of law, to which no response is required.

22. Paragraph 22 states a conclusion of law, to which no response is required.

23. Paragraph 23 states a conclusion of law, to which no response is required.

24. Paragraph 24 states a conclusion of law, to which no response is required.

B. The Endangered Species Act (“ESA”)

25. Paragraph 25 states a conclusion of law, to which no response is required.

26. Paragraph 26 states a conclusion of law, to which no response is required.

27. Paragraph 27 states a conclusion of law, to which no response is required.

28. Paragraph 28 states a conclusion of law, to which no response is required.

29. Paragraph 29 states a conclusion of law, to which no response is required.

30. Paragraph 30 states a conclusion of law, to which no response is required.

31. Paragraph 31 states a conclusion of law, to which no response is required.

32. Paragraph 32 states a conclusion of law, to which no response is required.

C. The Administrative Procedure Act

33. Paragraph 33 states a conclusion of law, to which no response is required.

34. Paragraph 34 states a conclusion of law, to which no response is required.

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