

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, STATE OF
CALIFORNIA, STATE OF ILLINOIS,
STATE OF MARYLAND, and STATE
OF MINNESOTA,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; and
ANDREW WHEELER, *in his official
capacity as Administrator of the United
States Environmental Protection Agency,*

Defendants.

20 Civ. 10642

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. This lawsuit challenges a U.S. Environmental Protection Agency regulation that needlessly increases the risk of exposure to harmful pesticides by permitting pesticide handlers to continue pesticide applications despite the presence of farmworkers or other persons within the area immediately surrounding the application equipment.

2. Federal law requires EPA to take steps to protect humans and the environment from unreasonable adverse effects of pesticides. Consistent with this obligation, EPA has published regulations known as the “Worker Protection Standard” intended to reduce the risk of illness and injury resulting from exposure to pesticides. *See* 40 C.F.R. Part 170.

3. In 2015, for the first time in nearly twenty-five years, EPA updated and strengthened its Worker Protection Standard “to prevent unreasonable adverse effects from exposure to pesticides among agricultural workers and pesticide handlers, vulnerable groups

(such as minority or low-income populations, child farmworkers, and farmworker families) and other persons who may be on or near agricultural establishments.” *Pesticides; Agricultural Worker Protection Standard Revisions*, 80 Fed. Reg. 67,496, 67,496 (Nov. 2, 2015) (the “2015 Rule”).

4. Among the measures included in the 2015 Rule to address exposure to pesticides, and to reduce the chronic and acute health impacts associated with those exposures, was the creation of an “Application Exclusion Zone,” referring to the area around pesticide application equipment that must be free of all persons other than trained and equipped handlers during pesticide applications. *Id.* at 67,496-97, 67,521–25, 67,564.

5. But in October 2020, EPA issued a rule that significantly curtails the protections of the Application Exclusion Zone, threatening the health and safety of farmworkers, their families, and others. *Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements*, 85 Fed. Reg. 68,760 (Oct. 30, 2020) (the “Final Rule”) (appended as Ex. 1).

6. In promulgating the Final Rule, EPA departed from the agency’s recent prior position without adequate justification or factual support; relied on an analysis of costs and benefits that fails to justify any changes to the Application Exclusion Zone; made a decision that runs counter to the evidence before the agency, including with regard to the ability of Plaintiffs and other States to comply with the 2015 Rule; and failed entirely to identify and address the disproportionately high and adverse effects of this policy change on minority and low-income populations.

7. The Final Rule’s unjustified and unwarranted changes to the Application Exclusion Zone will increase the risk of pesticide exposure among farmworkers, their families,

and others, and will injure Plaintiffs' sovereign, quasi-sovereign, economic, and proprietary interests.

8. Plaintiffs the State of New York, State of California, State of Illinois, State of Maryland, and State of Minnesota therefore bring this action to vacate the Final Rule and enjoin its implementation because it is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A); and because it exceeds and is contrary to Defendants' statutory jurisdiction, authority, and limitations in violation of the APA, 5 U.S.C. § 706(2)(C).

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a). Jurisdiction is also proper under the judicial review provisions of the APA, 5 U.S.C. § 702.

10. Declaratory and injunctive relief is sought consistent with 5 U.S.C. § 706 and as authorized in 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are United States agencies or officers sued in their official capacities. Plaintiff the State of New York is a resident of this judicial district, and a substantial part of the events or omissions giving rise to this Complaint occurred and are continuing to occur within the Southern District of New York.

PARTIES

12. Plaintiff the State of New York, represented by and through its Attorney General, is a sovereign state of the United States of America. The Attorney General is New York State's chief law enforcement officer and is authorized under N.Y. Executive Law § 63 to pursue this action.

13. Plaintiff the State of California, by and through Attorney General Xavier Becerra, is a sovereign state of the United States of America. As California's Chief Law Officer, the Attorney General has the authority to file civil actions to protect public rights and interests and promote the health and welfare of Californians. Cal. Const. art. V, § 13. This challenge is brought pursuant to the Attorney General's independent constitutional, statutory, and common law authority to represent the public interest.

14. Plaintiff the State of Illinois brings this action by and through Attorney General Kwame Raoul. The Attorney General is the chief legal officer of the State of Illinois, Ill. Const., art. V, § 15, and "has the prerogative of conducting legal affairs for the State," *Env'tl Prot. Agency v. Pollution Control Bd.*, 372 N.E.2d 50, 51 (Ill. Sup. Ct. 1977). He has common law authority to represent the People of the State of Illinois and "an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State." *People v. NL Indus.*, 604 N.E.2d 349, 358 (Ill. Sup. Ct. 1992).

15. Plaintiff the State of Maryland, represented by its Attorney General, is a sovereign state of the United States of America. The Attorney General has general charge of the legal business of the State of Maryland, Md. Code Ann., State Gov't § 6-106, and is authorized to investigate, commence, and prosecute or defend any civil or criminal suit or action that is based on the federal government's action or inaction that threatens the public interest and welfare of the residents of the State with respect to, among other things, protecting the health of the residents of the State or protecting the natural resources and environment of the State, *id.* § 6-106.1(b).

16. Plaintiff the State of Minnesota, represented by and through its Attorney General, is a sovereign state of the United States of America. Attorney General Keith Ellison is the chief

legal officer of the State of Minnesota and his powers and duties include filing lawsuits in federal court on behalf of the State of Minnesota. Minn. Stat. § 8.01.

17. Plaintiffs are aggrieved by Defendants' conduct and have standing to bring this action because the Final Rule harms Plaintiffs' sovereign, quasi-sovereign, economic, and proprietary interests and will continue to cause injury until the Final Rule is invalidated.

18. Defendant EPA is an agency within the executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f). EPA promulgated the Final Rule and is responsible for its enforcement.

19. Defendant Andrew Wheeler is the current Administrator of EPA and is responsible for the operations of the agency. He is sued in his official capacity.

ALLEGATIONS

I. Statutory and regulatory background.

20. The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. §§ 136–136y, requires EPA to take steps to protect humans and the environment from unreasonable adverse effects of pesticides.

21. Consistent with this obligation, EPA has published regulations intended to reduce the risk of illness and injury resulting from occupational exposure to pesticides while working on farms or in forests, nurseries, and greenhouses. *See* 40 C.F.R. Part 170 (the "Worker Protection Standard").

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