



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 7, 2021

Via ECF

Honorable Lewis J. Liman
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *State of New York et al. v. EPA et al.; Rural & Migrant Ministry et al. v. EPA et al.*
20 Civ. 10642 (LJL) (consolidated)

Dear Judge Liman:

This Office represents defendants the U.S. Environmental Protection Agency and Andrew Wheeler, named in his capacity as Administrator of the U.S. Environmental Protection Agency (together, “EPA”) in the above-referenced matter.

I write respectfully (1) to advise the Court that EPA consents to an extension of the temporary restraining order (“TRO”) entered on December 28, 2020, until January 19, 2021, pursuant to Fed. R. Civ. P. 65(b)(2); (2) to request a one-week extension of the hearing scheduled for tomorrow, January 8, 2021, at 2:30 p.m.; and (3) to request a one-week extension of tomorrow’s deadlines for the filing of record materials until January 15, 2021.

Yesterday, shortly before the filing of EPA’s opposition brief, EPA alerted this Office to an error in certain information underlying the rule at issue, Pesticides—Agricultural Worker Protection Standard: Revision of the Application Exclusion Zone Requirements (“2020 Rule”), 85 Fed. Reg. 68,760 (Oct. 30, 2020). *See* No. 20 Civ. 10645 (LJL), Dkt. No. 55 (EPA preliminary injunction opposition brief) at 16 n.13 (noting the issue).

Specifically, the 2020 Rule states that “EPA-approved trainings since 2018 . . . have also incorporated EPA’s 2016 guidance on how to apply pesticides near establishment borders and provide information on various measures applicators or handlers can take to prevent individuals from being contacted by spray or through drift,” and listed examples of such measures. 85 Fed. Reg. at 68,770-71. However, EPA advised this Office yesterday that some trainings approved by EPA since 2018 have not included such information.

EPA is now in the process of considering the issue and determining its effect, if any, on the 2020 Rule. In order to permit the agency sufficient time for this determination, EPA consents to an extension of the TRO precluding the implementation of the 2020 Rule until January 19, 2021, pursuant to Fed. R. Civ. P. 65(b)(2). In this connection, the government also respectfully requests a one-week adjournment of the hearing scheduled for tomorrow, January 8, at 2:30 p.m.

Last, the government has been conferring with Plaintiffs' counsel regarding the contents of the record in this matter and anticipates that a supplement to the record will be appropriate. In order to permit the resolution of these issues, alongside EPA's further consideration of the 2020 Rule, the government respectfully requests that the January 8, 2021, deadline for the filing of record materials be extended by one week, until January 15, 2021.

This is the first request to adjourn the January 8 hearing; the Court previously granted one extension of the time for EPA to file certain record materials.

Plaintiffs provided the following position for inclusion in this letter, and advised that they intend to file a more detailed response with the Court later tonight:

We consent to an extension of the TRO and continuance of the hearing. However, we believe that, based on the information provided in [the government's] letter, the extension of the TRO should be for the full 14 days permitted by Rule 65, and the hearing should be pushed out further to allow us the opportunity to respond in writing to EPA's determination regarding the effect of this new information on the 2020 Rule. This would also allow us time to respond to any new record materials provided by EPA.

Thank you for your consideration of this matter.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney for the
Southern District of New York

By: /s/ Samuel Dolinger
SAMUEL DOLINGER
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2677
E-mail: samuel.dolinger@usdoj.gov

cc: Counsel of record (via ECF)