

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,

RURAL & MIGRANT MINISTRY, ALIANZA
NACIONAL DE CAMPESINAS, EL COMITE
DE APOYO A LOS TRABAJADORES
AGRÍCOLAS, FARMWORKER ASSOCIATION
OF FLORIDA, MIGRANT CLINICIANS
NETWORK, PINEROS Y CAMPESINOS
UNIDOS DEL NOROESTE, RURAL
COALITION, UNITED FARM WORKERS, and
UNITED FARM WORKERS FOUNDATION,

Consolidated Plaintiffs,

-v-

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and JANE NISHIDA,
in her official capacity as Acting Administrator of
the United States Environmental Protection
Agency,¹

Defendants.

20 Civ. 10642 (LJL)
(Consolidated)

**[PROPOSED]
STIPULATION AND CONSENT
ORDER FURTHER
EXTENDING STAY AND
EXTENDING INJUNCTION**

WHEREAS on December 16, 2020, plaintiffs Rural & Migrant Ministry, Alianza Nacional de Campesinas, El Comité de Apoyo a Los Trabajadores Agrícolas, Farmworker Association of Florida, Migrant Clinicians Network, Pineros y Campesinos Unidos del Noroeste, Rural Coalition, United Farm Workers, and United Farm Workers Foundation (together, “Organizational Plaintiffs”) filed an action, No. 20 Civ. 10645, asserting claims under the

¹ Andrew Wheeler is no longer serving in the office of Administrator of the Environmental Protection Agency. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Jane Nishida, the Acting Administrator, is automatically substituted.

Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, challenging a regulation promulgated by the U.S. Environmental Protection Agency (“EPA”), Pesticides—Agricultural Worker Protection Standard: Revision of the Application Exclusion Zone Requirements (“2020 Rule”), 85 Fed. Reg. 68,760 (Oct. 30, 2020);

WHEREAS also on December 16, 2020, the states of New York, California, Illinois, Maryland, and Minnesota (together, “State Plaintiffs”), also filed an action, No. 20 Civ. 10642, asserting claims challenging the 2020 Rule under the APA;

WHEREAS on December 28, 2020, on the motion of the Organizational Plaintiffs,² the Court issued a temporary restraining order (“TRO”) under Fed. R. Civ. P. 65 and a stay under 5 U.S.C. § 705, postponed the effective date of the 2020 Rule until January 11, 2021, directed further briefing regarding Plaintiffs’ request for a preliminary injunction, and scheduled a hearing on January 8, 2021, “as to whether the stay and restraining order should be continued and a preliminary injunction granted or alternatively whether the stay and restraining order should be lifted and/or modified,” *see* No. 20 Civ. 10645, Dkt. No. 35;

WHEREAS on December 29, 2020, the Court issued an Opinion and Order granting a stay pursuant to 5 U.S.C. § 705, “for 14 days, until January 12, 2021,” *see* No. 20 Civ. 10645, Dkt. No. 37;

WHEREAS on January 7, 2021, the Court consolidated the cases numbered No. 20 Civ. 10642 and No. 20 Civ. 10645, *see* Dkt. No. 15;

WHEREAS on January 7, 2021, EPA advised the Court that it had identified an error in information underlying the 2020 Rule and consented to an extension of the TRO under Fed. R.

² The State Plaintiffs have not requested interim injunctive relief.

Civ. P. 65(b)(2), in order to give the agency sufficient time to evaluate the issue and determine its effect, if any, on the 2020 Rule, *see* Dkt. No. 17;

WHEREAS on January 8, 2021, the Court further extended the TRO and stay of the effective date of the 2020 Rule until January 22, 2021, *see* Dkt. No. 19;

WHEREAS on January 14, 2021, the Court further extended the TRO and stay of the effective date of the 2020 Rule until January 25, 2021, at 5:00 p.m., *see* Dkt. No. 30;

WHEREAS on January 19, 2021, EPA and the Organizational Plaintiffs entered a stipulation, so-ordered by the Court, which, *inter alia*, extended the stay of the effective date of the 2020 Rule under 5 U.S.C. § 705 until February 18, 2021, and entered a preliminary injunction enjoining and restraining EPA from taking any action to make effective the 2020 Rule before that date, *see* Dkt. No. 40; and

WHEREAS EPA needs additional time to determine how the agency will proceed with respect to the 2020 Rule in light of the error, and therefore agrees that a further stay of the effective date of the 2020 Rule is appropriate until that determination has been made;

NOW, THEREFORE, it is stipulated and agreed, and the Court hereby orders, as follows:

1. With the consent of the Organizational Plaintiffs and EPA,³ the stay of the effective date of the 2020 Rule under 5 U.S.C. § 705 shall be further extended through April 19, 2021, and the preliminary injunction shall likewise be extended such that it enjoins and restrains EPA from taking any action to make effective the 2020 Rule through the same date.

2. All proceedings in these consolidated actions, including the deadlines to answer or otherwise respond to the complaints in these consolidated matters, shall be stayed through April 19, 2021.

³ The State Plaintiffs consent to the relief requested in this Stipulation and Consent Order.

3. EPA shall provide a status update by April 12, 2021.

4. Counsel for EPA will file this Stipulation and Consent Order via ECF on behalf of EPA and the Organizational Plaintiffs. Pursuant to Section 8.5(b) of the Electronic Case Filing Rules & Instructions of the U.S. District Court, Southern District of New York, counsel for the Organizational Plaintiffs consent to the electronic filing of this Stipulation and Consent Order by counsel for EPA.

5. The terms of this Stipulation and Consent Order shall become effective upon its entry by the Court. If the Stipulation and Consent Order is not approved and entered by the Court, it shall be null and void, with no force or effect.

Dated: February 9, 2021

/s/ Carrie Apfel

Carrie Apfel
Earthjustice
1001 G Street, NW, Suite 1000
Washington, DC 20001
capfel@earthjustice.org

Eve Gartner
Surbhi Sarang
Kara Goad
Earthjustice
48 Wall Street, 19th Floor
New York, NY 10005
egartner@earthjustice.org
ssarang@earthjustice.org
kgoad@earthjustice.org

Iris Figueroa
Trent Taylor
Farmworker Justice
1126 16th St., NW, Suite LL-101
Washington, DC 20036
ifigueroa@farmworkerjustice.org
ttaylor@farmworkerjustice.org

Counsel for the Organizational Plaintiffs

Dated: February 9, 2021

AUDREY STRAUSS
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

Counsel for Defendants

SO ORDERED:



HONORABLE LEWIS J. LIMAN
United States District Judge

Dated: 2.10.2021
New York, New York