

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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, UNITED FARM WORKERS
FOUNDATION,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and Andrew Wheeler,
in his official capacity as Administrator of the
United States Environmental Protection Agency,

Defendants.

Civil Action No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. 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 (collectively, “Farmworkers”), seek declaratory and injunctive relief related to a final rule issued by the U.S. Environmental Protection Agency (EPA or Agency), Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements, 85 Fed. Reg. 68,760-01, 68,762 (Oct. 30, 2020) (Final Rule), attached as Exhibit 1. The Final Rule unjustifiably weakens a regulatory safeguard against

pesticide poisoning known as the Application Exclusion Zone (AEZ). The AEZ was enacted by EPA to protect farmworkers and frontline communities from being poisoned by the drift of sprayed pesticides at the time of application. The Final Rule's erosion of this protection poses an unreasonable risk of harm to human health, in violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA's decision to eliminate AEZ safeguards is an unlawful reversal of its position from just a few years ago, when it determined the AEZ was necessary to fulfill its duty under FIFRA. EPA reversed its position and promulgated the Final Rule despite lack of record support and, therefore, in violation of the Administrative Procedure Act (APA).

2. Pesticides are inherently toxic chemicals used to kill or control pests. Many pesticides pose serious public health and environmental threats, but they are of particular concern for farmworkers, who face the highest levels of exposure to these toxic substances, and their families, who are exposed to pesticide residues from the workers' clothing and skin. Farmworkers provide essential labor that feeds our country, but they continue to face a number of societal and economic inequities that exacerbate the threats pesticides pose to their health, safety, and well-being.

3. In 2015, EPA understood the vital and urgent need for additional protections from pesticides and created the AEZ. The Agency pointed to overwhelming evidence that people were still being sprayed by pesticides, both on and off of growing areas, despite existing protections, such as the "do not contact" provision. This evidence included data from state pesticide exposure databases and information from commenters and stakeholders. EPA established the AEZ to address one of the most common causes of pesticide poisoning: exposure to pesticide spray drift during applications. The AEZ provision provides that during an active pesticide application, no person can be within a 100-foot radius (or 25-foot radius for certain applications) of the pesticide

application equipment. If someone is in this radius, that is within the “Application Exclusion Zone,” when a pesticide is being sprayed (other than a trained and equipped person involved in the pesticide application), the applicator must take a simple and common-sense step: suspend pesticide application immediately until the person has moved outside of the AEZ. The protections afforded by the AEZ apply whether the person who is in the radius is on the property of the grower or on neighboring property.

4. On October 30, 2020, EPA published the Final Rule, which guts the AEZ protections by limiting its scope to the boundaries of the agricultural establishment, despite the fact that pesticide drift does not stop at property lines; allowing pesticide handlers to make or resume an application despite the presence of someone within the AEZ under certain circumstances; and reducing the AEZ from 100 feet to 25 feet for many applications.

5. The Final Rule, which takes effect December 29, 2020, threatens the health and safety of farmworkers, farmworker families, and communities located near agricultural establishments. Without this protection in place, the rate of pesticide exposures is likely to rise, increasing the risk to millions of people of adverse health effects ranging from headaches, nausea, and skin rashes to pregnancy complications, difficulty breathing, unconsciousness, and, in severe cases, death.

6. Plaintiffs, a group of organizations representing farmworkers and rural communities, respectfully request that the Court grant a temporary restraining order and/or preliminary injunction enjoining implementation of the rule, or a stay preventing the modified AEZ provision from taking effect until this case has been fully adjudicated, and then hold that (1) the Final Rule violates FIFRA because EPA promulgated it without substantial evidence that the modified AEZ would avert “unreasonable adverse effects” of pesticide use to workers and

bystanders and (2) that the Final Rule violates the APA because it is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. In addition, Plaintiffs seek an order vacating the Final Rule.

JURISDICTION AND VENUE

7. This action arises under FIFRA, 7 U.S.C. § 136 et. seq., and the APA, 5 U.S.C. §§ 701–06. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States) and 5 U.S.C. § 702 (judicial review of agency actions).

8. This Court has the authority to grant the requested declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–202, and 5 U.S.C. §§ 702 and 706. This Court has the authority to grant the requested preliminary relief under 5 U.S.C. § 705 and Fed. R. Civ. Proc. 65.

9. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(e), because this civil action is brought against an agency of the United States and Plaintiff Rural & Migrant Ministry has its principal place of business in Poughkeepsie, New York, which is in this District, and no real property is involved in the action.

PARTIES

10. Plaintiff Rural & Migrant Ministry (RMM) is a statewide, non-profit organization founded in 1981 that advocates for, and works closely with, rural and migrant communities throughout New York. RMM works with rural leaders towards the creation of a just, rural New York State through nurturing leadership; standing with the disenfranchised, especially farmworkers and rural workers; and changing unjust systems and structures. RMM implements its mission through three programs: an accompaniment program, in which RMM accompanies and supports rural workers—most often, farmworkers—who seek to improve working and

living conditions; an education program to strengthen rural leaders; and a youth empowerment program committed to empowering rural children to create opportunities for themselves while at the same time learning how to change their world. The communities that RMM works with give direct input into RMM's programs and RMM staff frequently visit farms to speak with workers and learn about their concerns. RMM's stakeholders include farmworkers and rural communities who will be at increased risk of pesticide exposure as a result of the Final Rule. Furthermore, RMM's mission to advance a just and rural New York State in which farmworkers operate in safe working and living conditions cannot be fulfilled when worker protections like the AEZ are weakened. Thus, in order to notify farmworkers and communities about their increased vulnerability to pesticides as result of the Final Rule, and how to manage that increased risk, RMM is planning additional education and outreach programs for farmworkers on pesticide use and exposure if the Final Rule goes into effect.

11. Plaintiff Alianza Nacional de Campesinas (Alianza), founded in 2011, is a national non-profit farmworker organization that serves the unique needs and concerns of our nation's more than 700,000 farmworker women and their families. Alianza's 15 member organizations include: Organización en California de Líderes Campesinas, Mujeres Luchadoras Progresistas, La Mujer Obrera, Workers' Center of Central New York, Workers Justice Center of New York, Mujeres Divinas, Centro de los Derechos del Migrante, Inc, Mujeres Campesinas Unidas de Florida, and fellow plaintiffs Asociación Campesina de Florida, Pineros y Campesinos Unidos del Noroeste, and Rural Coalition. Alianza works to build the capacity and leadership of farmworker women through its national organizing efforts, public education and outreach campaigns, and federal policy-advocacy work, a core prong of which is preventing exposure to pesticides. Alianza's members have suffered from exposure to off-target pesticide

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