

ORAL ARGUMENT NOT YET SCHEDULED

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

FARMWORKER ASSOCIATION OF
FLORIDA, et al.

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 21-1079

**MOTION OF AGLOGIC FOR LEAVE TO INTERVENE
IN SUPPORT OF RESPONDENT**

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), AgLogic Chemical, LLC (“AgLogic”) moves for leave to intervene in *Farmworker Association of Florida v. United States Environmental Protection Agency*, Case No. 21-1079, in support of respondent United States Environmental Protection Agency (“EPA”). The petition for review challenges EPA’s decision to conditionally register new uses of aldicarb as set forth in its “Registration Decision for the Uses on Oranges and Grapefruit in Florida, Aldicarb” (Jan 12, 2021), amendments to the aldicarb product labels for MEYMIK TECHNICAL (EPA Reg. No. 87895-2) and AGLOGIC 15GG (EPA reg. No. 87895-4), and registration of a new product, AgLogic 15GG-

OG (EPA Reg. No. 87895-7). Counsel for AgLogic sought the position of the parties on this motion. Counsel for Petitioners stated that Petitioners do not oppose the motion. Counsel for EPA had not provided a position as of the time of filing.

EPA's decision conditionally registers a pesticide called aldicarb for use on orange and grapefruit crops under section 3(c)(7)(B) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136a(c)(7)(B). AgLogic applied to EPA for registration of aldicarb for such additional uses in 2019 in order to be able to manufacture and sell aldicarb pesticide products. Aldicarb is a granular pesticide administered directly into the soil that has been shown to provide good control of the most significant pest for citrus crops. EPA's registration decision limits use of aldicarb to 100,000 acres in Florida and also requires a stewardship and monitoring program that requires extensive training on application of aldicarb.

AgLogic meets the standards for intervention in support of EPA because: (1) its request is timely; (2) it has a material interest in the Petition because it benefits directly from the registration and product approval at issue in the litigation; (3) that interest may as a practical matter be impaired or impeded if Petitioners are successful; and (4) EPA cannot adequately represent AgLogic's commercial interests in the registration decision. The motion to intervene should be granted.

BACKGROUND

I. Citrus Greening Disease and Aldicarb

The bacterial disease Huanglongbing (*Candidatus Liberibacter asiaticus*), known as HLB or citrus greening disease, is spread by the Asian citrus psyllid (ACP) and considered the most significant pest for citrus crops worldwide, with infection leading to yield losses and tree death. Puech Decl. ¶ 3. An efficient insect vector, the ACP transmits the causal agent of citrus greening disease, a bacteria that attacks a citrus tree's vascular system. *Id.* ¶ 3. Orange and grapefruit growers in Florida are facing substantial pressure to mitigate the catastrophic effects of ACP on their crops. *Id.*

Since citrus greening first appeared in Florida in 2005, orange and grapefruit growers in Florida have faced a tremendous decline in productivity. *Id.* ¶¶ 3–5. According to a recent University of Florida publication – The Economic Impacts of Citrus Greening (HLB) in Florida – this disease and the resulting loss of production has cost the citrus industry more than \$7 billion in lost revenue. *Id.* This loss of production translated to the loss of more than 8,000 jobs. *Id.* The industry reports that since the onset of greening Florida went from producing 19 tons of oranges per acre to currently about nine tons per acre, went from having 80 citrus packinghouses to about 20, and reduced major juice processing plants from 12 to about six. *Id.* These declines in production occurred, notwithstanding that there are approximately

30 active alternative pesticide ingredients registered for use on grapefruit and oranges in Florida that purport to manage ACP. *Id.*

EPA granted AgLogic a FIFRA registration in 2011, which remains current, for aldicarb use on cotton, dry beans, peanuts, soybeans, sugar beets, and sweet potatoes. *Id.* ¶ 6. From the mid-1970s until 2010, it was also registered for use on citrus crops and potatoes, but those uses were voluntarily relinquished by the former registrant Bayer Crop Science. *Id.* The citrus industry in Florida is searching for tools to help battle citrus greening, and has encouraged AgLogic to re-register the pesticide aldicarb that was registered for use on citrus. *Id.*

AgLogic's AgLogic 15 GG aldicarb pesticide is not a foliar spray. *Id.* ¶ 7. It is a granular pesticide applied 3 or more inches deep in the soil using special motorized ground application equipment. *Id.* AgLogic 15 GG aldicarb pesticide is a proprietary specially formulated granular pesticide, for subsurface soil application only. *Id.* The AgLogic formulation process dramatically reduces the acute oral toxicity of AgLogic 15 GG aldicarb pesticide by about 29 fold less than that of pure aldicarb. *Id.* And it dramatically reduces the dermal toxicity of AgLogic 15 GG aldicarb pesticide by about 1,000 fold less than pure aldicarb. *Id.*

Aglogic 15 GG aldicarb pesticide is applied to orange and grapefruit early in the growing season (from November 15 through April 30) to control certain insects, mites, and nematodes, including the ACP. *Id.* ¶ 8. When aldicarb was previously

registered for use on oranges and grapefruit, it was recommended by the Florida Citrus Pest Management Guide for control of ACP and was assigned the highest possible rating—providing “good” control. *Id.* The machinery that administers the aldicarb buries the granules simultaneously to a depth of 3 or more inches below the soil surface. *Id.* This prevents any offsite movement during application, and non-target contamination during application. *Id.* Given its long history in Florida, the Florida Department of Agriculture and Consumer Services (FDACS) has a specific state regulation “The Florida Aldicarb Rule” that it administers and enforces (Rule 5E-2.028, Florida Administrative Code). *Id.* That Rule allows use of aldicarb from November 15 to April 30. *Id.* EPA issued its conditional registration for aldicarb requiring compliance with a rigorous stewardship program coordinated by FDACS and AgLogic. *Id.* The requirements include, among other things, drinking water wells monitoring and specific protections to prevent contamination of drinking water wells. *Id.* Aldicarb is a Restricted Use Pesticide (RUP) and may only be purchased and only be applied by State Licensed Restricted Use Pesticide applicators or persons under the supervision of a Restricted Use Pesticide license holder. *Id.*

Aldicarb provides significant benefits over other pesticides. It is released from the granules by soil moisture, absorbed by the roots, and then precisely translocated into the tree’s foliar leaf canopy. *Id.* ¶ 9. There, it provides rainfall wash off resistant, systemic control for an average of 10 and 15 weeks for ACP nymphs and adults

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