

No. 19-70115

IN THE
United States Court of Appeals
for the Ninth Circuit

NATIONAL FAMILY FARM COALITION, et al.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents,

and

MONSANTO COMPANY,
Intervenor-Respondent.

ON PETITION FOR REVIEW FROM THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

**BASF CORPORATION'S EMERGENCY MOTION TO INTERVENE
UNDER FEDERAL RULE OF APPELLATE PROCEDURE 15(D) AND
NINTH CIRCUIT RULE 27-3**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1 and Federal Rule of Appellate Procedure 26.1, counsel for Proposed-Intervenor BASF Corporation (“BASF”) certifies that BASF Corporation is a wholly owned subsidiary of BASF Americas Corporation. BASF Americas Corporation is a wholly owned subsidiary of BASFIN Corporation. BASF Corporation, BASF Americas Corporation, and BASFIN Corporation are all Delaware corporations. BASFIN Corporation is a majority owned subsidiary of BASF USA Holding LLC, a Delaware limited liability company. BASF USA Holding LLC is a wholly owned subsidiary of BASF Nederland BV, a Dutch limited liability company, which in turn is a wholly owned subsidiary of BASF SE (Societas Europaea – “SE”), a publicly traded European Company. BASF Corporation, BASF Americas Corporation, BASFIN Corporation, BASF USA Holding LLC and BASF Nederland BV are not publicly held. No publicly held corporation owns 10% or more of BASF’s stock.

June 12, 2020

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CIRCUIT RULE 27-3 CERTIFICATE

The undersigned counsel certifies that the following information is true and correct, as required by Circuit Rule 27-3:

1. Telephone numbers and addresses of the attorneys for the parties.

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2. Facts showing the existence and nature of the emergency.

As this emergency motion explains in full, the panel decision vacated EPA's registration of Engenia issued to BASF. Neither the petition for review, nor subsequent developments in this litigation, put BASF on notice that its Engenia registration was at issue because Petitioners' challenge was to the registration of a different pesticide, XtendiMax, which EPA registered in a separate agency action. The panel decision ordered the mandate issued immediately, which has forced BASF to act on a tremendously expedited basis to protect its rights with respect to its Engenia product, as well as the rights of farmers that depend on that product to grow their crops.

Exacerbating the need for expedited action by BASF to protect its rights, Petitioners have now moved to recall the mandate and seek to hold EPA in contempt for its actions taken in the wake of the panel's extraordinary decision. The mandate issued the same day as the decision. This left BASF and farmers that

use Engenia in a state of flux—as it did for Monsanto and Corteva, whose registrations were also vacated in this decision. EPA attempted to address this real problem by issuing an order restricting the use of existing stocks by growers and certified applicators to those stocks that were in their possession as of the date of the mandate issuance, but only through July 31, 2020, and only consistent with the label restrictions associated with the now-vacated product registrations. Petitioners now seek to invalidate that effort to address the effects of the panel’s decision to issue the mandate immediately. That action directly affects BASF’s interests in the use of its Engenia product.

Petitioners have sought expedited consideration of their motions, and BASF similarly needs expedited consideration of its intervention motion to allow it to participate in these proceedings.

3. Why the motion could not have been filed earlier.

As explained in full in the accompanying motion, BASF did not have notice that its rights in its Engenia registration were at issue in this litigation until the panel decision on June 3, 2020. BASF is filing this motion within ten days of that decision. And it is filing immediately after Petitioners filed their motion to recall the mandate and seek contempt.

4. When and how BASF gave notice to, and served the motion on, counsel for the other parties and the other parties’ positions on the motion.

Counsel for BASF notified counsel for Petitioners of BASF’s intent to file

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