

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 OPPOSITION TO PETITIONERS'
EMERGENCY MOTION TO ENFORCE VACATUR AND
CROSS-MOTION TO RECALL AND STAY MANDATE**

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TABLE OF CONTENTS

INTRODUCTION	1
ARGUMENT	3
I. THE COURT SHOULD DENY PETITIONERS’ REQUEST TO RESHAPE AND REISSUE THE MANDATE.	3
A. Petitioners’ motion should be denied because Petitioners have already been afforded the relief provided by the Court’s decision, and because the Court lacks jurisdiction over EPA’s June 8 order.	4
B. Petitioners’ motion should be denied because there is no basis for the Court to issue an injunction against use.	6
C. Petitioners’ motion should be denied because Petitioners’ alleged “emergency” was caused by their own litigation tactics.....	8
II. EPA’S EXISTING STOCKS ORDER IS A NECESSARY AND APPROPRIATE RESPONSE TO THIS COURT’S VACATUR.	11
A. Petitioners’ motion misconstrues FIFRA and the nature of a product registration.	11
B. EPA’s June 8 order properly addressed the legal and practical consequences of vacatur.....	14
C. The Panel’s Opinion did not purport to immediately “ban” all use of the vacated products.	15
D. EPA’s actions were consistent with every prior instance where a registration was vacated by court order and with what EPA advised this Court it would do.	16
III. THE MANDATE SHOULD BE RECALLED AND SHOULD NOT REISSUE BEFORE THE NORMAL TIMEFRAME ESTABLISHED BY THE FEDERAL RULES.	17
CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases

<i>Bennet v. Donovan</i> , 703 F.3d 582 (D.C. Cir. 2013).....	5, 6
<i>Fed. Power Comm’n v. Idaho Power Co.</i> , 344 U.S. 17 (1952).....	5
<i>FIFRA in Pollinator Stewardship Council v. EPA</i> , 806 F.3d 520 (9th Cir. 2015)	12, 13, 16
<i>FTC v. Colgate-Palmolive</i> , 380 U.S. 374 (1965).....	5
<i>Harmon v. Thornburgh</i> , 878 F.2d 484 (D.C. Cir. 1989).....	5
<i>Heartland Hosp. v. Thompson</i> , 328 F. Supp. 2d 8 (D.D.C. 2004).....	4
<i>Mathews v. Eldridge</i> , 424 US 319 (1976).....	20
<i>Monsanto Co. v. Geertson Seed Farms</i> , 561 U.S. 139 (2010).....	5
<i>Pollinator Stewardship Council v. EPA</i> , 806 F.3d 520 (9th Cir. 2015)	9
<i>State of California v. United States Dep’t of Labor</i> , 155 F. Supp. 3d 1089 (E.D. Cal. 2016)	4
<i>Zipfel v. Halliburton Co.</i> , 861 F.2d 565 (9th Cir. 1988)	18

Statutory Authorities

7 U.S.C. § 136(q)	13
7 U.S.C. § 136a(a).....	12

7 U.S.C. § 136j(a)(1)(A)..... 12
7 U.S.C. § 136j(a)(2)(G)..... 12, 13
7 U.S.C. § 136n..... 3, 6

Rules and Regulations

Fed. R. App. P. 27(d)(1)(E) 1
Fed. R. App. P. 27(d)(2)(A)..... 1
Fed. R. App. P. 41 18

INTRODUCTION

BASF Corporation respectfully submits this Opposition to Petitioners' Emergency Motion to Enforce This Court's Vacatur, and Cross-Motion to Recall and Stay the Mandate (ECF 127).¹ It is neither necessary nor permissible for the panel to take steps to "enforce" its June 3, 2020 decision that vacated the registrations of three dicamba pesticide products, including BASF's Engenia. This Court lacks jurisdiction over EPA's June 8 "Final Cancellation Order for Three Dicamba Products," because it is a new order issued after vacatur. Moreover, EPA's order is entirely consistent with the Court's ruling. The order acknowledges that the registrations are vacated and speaks only to the legal and practical consequences of vacatur for existing stocks of product.

Contrary to Petitioners' assertions, EPA's order does not seek to maintain the *status quo* in the wake of the panel's vacatur of the registrations. To the contrary, the order confirms that registrants and distributors nationwide were (and still are) prohibited under FIFRA from selling or distributing any of the now-unregistered products, including existing stocks, as of the date of the panel's mandate, June 3, 2020. The exception is shipment for purposes of return or

¹ BASF tenders this submission as a conditional filing pending resolution of its pending Motion to Intervene. ECF 130. BASF suggests that any responses to BASF's cross-motion be submitted by June 18 to correspond to Petitioners' reply deadline for their Motion.

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