

**REDACTED**

No. 19-72109, 19-72280

---

---

IN THE  
**United States Court of Appeals**  
**for the Ninth Circuit**

---

CENTER FOR FOOD SAFETY, et al.,  
*Petitioners,*

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.,  
*Respondents,*

and

CORTEVA AGRISCIENCE LLC,  
*Respondent-Intervenor.*

---

ON PETITION FOR REVIEW FROM THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

---

**BRIEF OF INTERVENOR**  
**CORTEVA AGRISCIENCE LLC**

---

Kirsten L. Nathanson  
Amanda Shafer Berman  
David Y. Chung  
Amy Symonds  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 624-2887  
knathanson@crowell.com

*Counsel for Intervenor Corteva  
Agriscience LLC*

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26,1, Respondent-Intervenor Corteva Agriscience LLC (“Corteva”) respectfully submits the following Corporate Disclosure Statement.

Corteva is a Delaware limited liability company. Corteva is 100% owned by Mycogen LLC, Centen Ag LLC (“Centen”), and DDP AgroSciences US DCOMCO, Inc. (“DDP”). Centen and DDP are wholly owned by Pioneer Hi-Bred International, Inc., which is wholly owned by E. I. du Pont de Nemours and Company (“EID”), a publicly traded company. EID is wholly owned by Corteva, Inc., a publicly traded company. No other corporation holds a 10% or greater ownership interest in Corteva.

Dated: May 3, 2021

Respectfully submitted,

/s/ Kirsten L. Nathanson

Kirsten L. Nathanson

Amanda Shafer Berman

David Y. Chung

Amy Symonds

CROWELL & MORING LLP

1001 Pennsylvania Avenue, NW

Washington, DC 20004

(202) 624-2887

knathanson@crowell.com

*Counsel for Intervenor Corteva  
Agriscience LLC*

**TABLE OF CONTENTS**

	<b>Page</b>
CORPORATE DISCLOSURE STATEMENT .....	i
INTRODUCTION .....	1
STATEMENT OF JURISDICTION.....	3
PERTINENT STATUTES AND REGULATIONS .....	3
STATEMENT OF THE CASE.....	4
A.    The 2013 Registration and the <i>Pollinator I</i> decision. ....	4
B.    EPA Re-Registers Sulfoxaflor in 2016. ....	5
C.    Corteva Submits More Data to Support Additional Uses.....	5
D.    The 2019 Registration Amendments.....	7
E.    Petitioners’ Challenge to the 2019 Registration Amendments. ....	9
SUMMARY OF ARGUMENT .....	10
ARGUMENT .....	12
I.    The Registration Amendments Must be Assessed Under FIFRA’s Substantial Evidence Standard, with Deference to EPA’s Expert Assessment of the Record Data.....	12
II.   Substantial Evidence Supports EPA’s Conclusion that the Registration Amendments Will Not Have Unreasonable Adverse Effects. ....	15
A.    Substantial evidence supports EPA’s conclusion that expanding sulfoxaflor usage is environmentally beneficial. ....	16
B.    There is substantial evidence that sulfoxaflor displaces the use of older, less effective pesticides.....	22
C.    Petitioners’ other attacks on the Registration Amendments fall short. ....	29

1.	Petitioners’ argument that EPA failed to assess risk to non-honey bees is misleading and baseless. ....	29
2.	EPA considered economic and social impacts from sulfoxaflor use.....	30
3.	EPA’s decision to reconsider certain mitigation measures was sound.....	33
III.	Vacatur is Not an Appropriate Remedy Because It Would Eliminate Sulfoxaflor’s Environmental Benefit and Cause Economic Damage. ....	35
A.	Vacatur is unwarranted because EPA extensively evaluated the ecological effects of the Registration Amendments. ....	35
B.	Remand without vacatur will be environmentally beneficial and avoid economic disruption. ....	43
1.	Remand without vacatur will be environmentally beneficial.....	44
2.	Remand without vacatur will avoid disruption to farmers. ....	53
	CONCLUSION.....	59

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>All. for Wild Rockies v. Marten</i> , 789 F. App'x 583 (9th Cir. 2020).....	43
<i>Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n</i> , 988 F.2d 146 (D.C. Cir. 1993).....	35, 36, 42, 43
<i>ASARCO, Inc. v. OSHA</i> , 746 F.2d 483 (9th Cir. 1984) .....	15, 16
<i>Biestek v. Berryhill</i> , 139 S. Ct. 1148 (2019).....	13, 14
<i>Cal. Cmty. Against Toxics v. EPA</i> , 688 F.3d 989 (9th Cir. 2012) .....	<i>passim</i>
<i>California Communities Against Toxics v. EPA</i> , 688 F.3d 174 (9th Cir. 2012) .....	59
<i>City of Tacoma, Washington v. FERC</i> , 460 F.3d 53 (D.C. Cir. 2006).....	38
<i>Consolo v. Fed. Mar. Comm'n</i> , 383 U.S. 607 (1966).....	13
<i>Ctr. for Biological Diversity v. EPA</i> , 861 F.3d 174 (D.C. Cir. 2017).....	36, 44, 45
<i>Ctr. for Biological Diversity v. Esper</i> , 958 F.3d 895 (9th Cir. 2020) .....	14
<i>EME Homer City Generation, L.P. v. EPA</i> , 795 F.3d 118 (D.C. Cir. 2015).....	43
<i>Idaho Farm Bureau Fed'n v. Babbitt</i> , 58 F.3d 1392 (9th Cir. 1995) .....	43
<i>Nat. Res. Def. Council, Inc. v. U.S. Dep't of Interior</i> , 275 F. Supp. 2d 1136 (C.D. Cal. 2002) .....	44

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.