

No. 21-71180

IN THE
United States Court of Appeals
for the Ninth Circuit

CENTER FOR FOOD SAFETY AND CENTER FOR BIOLOGICAL DIVERSITY,
Petitioners,

v.

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

ON PETITION FOR REVIEW FROM THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BASF CORPORATION'S MOTION TO INTERVENE

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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 Delaware Corporation whose shares are not publicly traded. BASF Corporation is a wholly 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. BASF Nederland BV is a wholly owned subsidiary of BASF SE (Societas Europaea – “SE”), a publicly traded European company. Further, no publicly held corporation owns 10% or more of BASF Corporation's stock.

August 13, 2021

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I. INTRODUCTION

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, BASF Corporation (“BASF”) respectfully moves for leave to intervene on behalf of Respondents in the above-captioned Petition for Review. BASF contacted counsel for the parties and Respondents’ counsel indicated they do not oppose the motion. Petitioners’ counsel indicated that they would reserve their position until after reviewing the motion.

BASF’s direct interest in this action justifies intervention. BASF owns the registrations issued by the United States Environmental Protection Agency (“EPA” or “the Agency”) for herbicide products containing the new active ingredient trifludimoxazin that Petitioners seek to challenge in this action. Petition at 2; Petition Exhibit A at 3. The registrations are federal licenses issued under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 *et seq.*, without which BASF cannot distribute and sell herbicide products containing trifludimoxazin, including its Tirexor product.

On May 25, 2021, EPA granted BASF registrations for Tirexor Herbicide Technical, a technical product containing 99.2% trifludimoxazin, and Tirexor Herbicide, an end-use product containing trifludimoxazin. These registrations allow BASF to produce and sell Tirexor for use on agricultural fields and in non-

agricultural settings to control broadleaf and grass weed species. Trifludimoxazin provides growers an important new tool for control of waterhemp and palmer amaranth in crops, including corn and soybean, where PPO-inhibitor-resistant weeds are present.¹ Its unique properties provide effective weed control and help manage increasing challenges posed by herbicide-resistant weeds.²

Petitioners ask this Court to find unlawful EPA's May 12, 2021 Registration Decision and the Agency's May 25, 2021 orders granting the trifludimoxazin registrations, to set aside or vacate the registrations, and to stop the use and sale of trifludimoxazin herbicide products authorized by the registrations. Petition at 2.

The requirements for intervention under Rule 15(d) are satisfied. BASF's request is timely, BASF's trifludimoxazin registrations are the registrations Petitioners seek to vacate, and BASF's ability to protect its interests in its registrations would be impaired by an adverse disposition. Finally, as courts have repeatedly held in similar actions, BASF's private interests will not be adequately represented by EPA. In defending its registration decisions, the Agency takes into account broader interests and objectives that diverge from BASF's more specific

¹ Memorandum Supporting Decision to Approve Registration for the New Active Ingredient, Trifludimoxazin (May 12, 2021) ("Registration Memorandum"), Petition Exhibit A at 3, 19.

² Registration Memorandum at 19.

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