

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL FAMILY FARM  
COALITION, FAMILY FARM  
DEFENDERS, BEYOND  
PESTICIDES, CENTER FOR  
BIOLOGICAL DIVERSITY,  
CENTER FOR FOOD SAFETY, and  
PESTICIDE ACTION NETWORK  
NORTH AMERICA,

*Petitioners,*

v.

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY, and SCOTT PRUITT, in  
his official capacity as Administrator,

*Respondents.*

Case No.

**PETITION FOR REVIEW**

and

**CORPORATE DISCLOSURE  
STATEMENT**

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**PETITION FOR REVIEW**

Pursuant to Section 16(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (the Pesticide Act), 7 U.S.C. § 136n(b), and Rule 15(a) of the Federal Rules of Appellate Procedure, Petitioners National Family Farm Coalition, Family Farm Defenders, Beyond Pesticides, Center for Biological Diversity, Center for Food Safety, and Pesticide Action Network North America (collectively Petitioners) hereby petition this Court to review and set aside the final order of the

United States Environmental Protection Agency (EPA) granting a conditional registration of Enlist Duo Herbicide (Enlist Duo), CAS Number 048373-72-3, containing the active ingredients 2,4-Dichlorophenoxyacetic acid (2,4-D) and glyphosate. A copy of this final regulatory decision document is attached as Exhibit A to this Petition.

The challenged conditional registration of Enlist Duo (1) replaces the previously registered use of Enlist Duo on corn and soybean genetically engineered (GE) to resist 2,4-D and glyphosate in fifteen states<sup>1</sup> where the use had previously been registered unconditionally; (2) approves new uses of Enlist Duo on GE corn and soybean in an additional nineteen states,<sup>2</sup> and (3) approves a new use of Enlist Duo on GE cotton in all thirty-four states. *See Ex. A*, at 1.

Petitioners respectfully petition this Court to find that EPA violated its duties under the Pesticide Act in issuing the conditional registration. Petitioners further request this Court to find that EPA violated the Agency's duties under the Endangered Species Act (ESA), 16 U.S.C. §§ 1533-44, by failing to consult with the United States Fish and Wildlife Service or the National Marine Fisheries

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<sup>1</sup> The fifteen states are: Illinois, Indiana, Iowa, Ohio, South Dakota, Wisconsin, Arkansas, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, and Oklahoma. *See Ex. A*, at 1.

<sup>2</sup> The additional nineteen states are: Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New Mexico, New York, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia. *See id.*

Service to insure that conditionally registering Enlist Duo for uses on GE corn, soybean, and cotton in the thirty-four states to insure that the conditional registration will not jeopardize any listed species or destroy or adversely modify any of their critical habitats, *see* 16 U.S.C. § 1536 (a)(2), and to grant relief as may be appropriate.

The challenged final order was announced in a regulatory decision document that was dated and entered on EPA Docket EPA-HQ-OPP-2016-0594 on January 12, 2017, after public notice and comment, and without any agency adjudication or hearing. *See* Ex. A. The order does not explicitly provide for a time for its entry. *See id.* Accordingly, pursuant to 40 C.F.R. § 23.6, the challenged order became final for the purpose of this Court's jurisdiction to review as of 1:00 p.m. eastern time on January 26, 2017.<sup>3</sup>

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<sup>3</sup> FIFRA's implementing regulations provide, at 40 C.F.R § 23.6:

Timing of Administrator's action under Federal Insecticide, Fungicide and Rodenticide Act.

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of entry of an order issued by the Administrator following a public hearing for purposes of section 16(b) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is two weeks after it is signed.

*Id.*

Under the law of the Ninth Circuit, Petitioners are required to file their claims under the Pesticide Act in the Court of Appeals. Petitioners do not waive any argument concerning jurisdiction for claims under the ESA by including them here.

Respectfully submitted this 21st day of March, 2017.

/s/ George A. Kimbrell

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioners National Family Farm Coalition, Family Farm Defenders, Beyond Pesticides, Center for Biological Diversity, Center for Food Safety, and Pesticide Action Network North America certify that they have no parent corporations and that no publicly held corporation owns more than ten percent of the Petitioners.

Dated: March 21, 2017

/s/ George A. Kimbrell

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