

PREET BHARARA
United States Attorney for the
Southern District of New York
By: MICHAEL J. BYARS
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2793
Facsimile: (212) 637-2717
E-mail: michael.byars@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NATIONAL RESOURCES DEFENSE COUNCIL
and PESTICIDE ACTION NETWORK NORTH :
AMERICA, :
 :
Plaintiffs, :
 :
-against- :
 :
UNITED STATES ENVIRONMENTAL :
PROTECTION AGENCY and LISA P. JACKSON, :
EPA Administrator, :
 :
Defendants. :
-----X

ECF CASE

**STIPULATION AND ORDER
TRANSFERRING CASE TO
THE SUSPENSE DOCKET**

10 Civ. 5590 (CM) (HBP)

WHEREAS, on July 22, 2010, Plaintiffs Natural Resources Defense Council (“NRDC”) and Pesticide Action Network North America (“PANNA”) filed this lawsuit alleging that the Environmental Protection Agency (“EPA”) had unreasonably delayed in responding to NRDC and PANNA’s September 12, 2007 “Petition to Revoke All Tolerances and Cancel All Registrations for the Pesticide Chlorpyrifos” (the “Petition”);

WHEREAS, EPA plans to take the following actions pursuant to the following schedule (the “Schedule”):

- (a) On or before June 1, 2011, issue a preliminary human health risk assessment for chlorpyrifos and take public comment on that assessment;

(b) On or before November 23, 2011, send NRDC and PANNA EPA's written response to the Petition.

WHEREAS, the parties wish to suspend this action while EPA takes the actions contemplated in the Schedule;

WHEREAS, the parties agree that if EPA fails to take the actions contemplated in the Schedule, Plaintiffs' sole remedy shall be to remove this case from the suspense docket;

WHEREAS, by entering into this Stipulation and Order, no party waives any claim or defense relating to this litigation, including, but not limited to, Plaintiffs' assertion that EPA has unreasonably delayed in responding to the Petition and EPA's assertion that this Court lacks jurisdiction over this matter;

WHEREAS, this Stipulation and Order does not constitute any admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of any party;

WHEREAS, the parties agree that no provision of this Stipulation and Order shall be interpreted to constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, 701-06, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136-136y, the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 346a, or any other law or regulation, either substantive or procedural;

WHEREAS, the parties agree that the defendants named in the Complaint were sued in their official capacities, and any obligations or duties arising under this Stipulation and Order are to be performed by EPA;

WHEREAS, except as expressly provided herein, nothing in this Stipulation and Order shall be construed to limit or modify the discretion accorded EPA by law;

WHEREAS, nothing in this Stipulation and Order shall be construed to create rights in, or grant any cause of action to, any person or entity not party to this Stipulation and Order;

WHEREAS, this Stipulation and Order may be modified or amended only with the written consent of the parties;

WHEREAS, this Stipulation and Order contains the entire agreement between the parties, and no statements, representations, promises, agreements or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect;

WHEREAS, this Stipulation and Order shall become effective upon entry by the Court and

WHEREAS, this Stipulation and Order may be executed by facsimile transmission, and a photocopy may be used for all purposes;

NOW THEREFORE, it is agreed between the parties and ORDERED as follows:

1. This case is transferred to the suspense docket pursuant to Rule 20 of the Rules for the Division of Business Among District Judges for the Southern District of New York.
2. If EPA fails to take the actions contemplated in the Schedule, Plaintiffs' sole remedy is to reactivate the case upon written notice to the Honorable Colleen McMahan, United States District Judge, Southern District of New York, with a copy of such notice to be served upon EPA and the U.S. Attorney's Office at the addresses provided in paragraph 5 below. Contempt of court is not available as a remedy. Plaintiffs need not satisfy the "meet and confer" process described under paragraph 3 below before reinstating the litigation pursuant to this paragraph.

3. If the parties disagree about the interpretation or performance of any aspect of this Stipulation and Order, the dissatisfied party shall provide the other party with written notice of the dispute and a request for negotiations. The parties shall meet and confer in an effort to resolve the dispute within 14 days of the written notice, or at a time mutually agreed upon. If the parties are unable to resolve the dispute within 14 days of such meeting, Plaintiffs' sole remedy is to reactivate the case upon written notice to the Honorable Colleen McMahon, United States District Judge, Southern District of New York, with a copy of such notice to be served upon EPA and the U.S. Attorney's Office at the addresses provided in paragraph 4 below. Contempt of court is not available as a remedy.
4. Any notice required or made with respect to this Stipulated Injunction and Order shall be writing and shall be effective upon receipt. For any matter relating to this Stipulation and Order, notice shall be sent to:

For the Plaintiffs:

Kevin E. Regan, Esq.
Earthjustice
705 2nd Avenue, Suite 203
Seattle, WA 98117
Telephone: (206) 343-7340 x 21
Facsimile: (206) 343-1526

For the Defendants:

Mark A. Dyner, Esq.
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W., MC – 2333A
Washington, DC 20460

Michael J. Byars
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2793
Facsimile: (212) 637-2717
E-mail: michael.byars@usdoj.gov

5. If this action is not reactivated by January 23, 2012, the action will be dismissed with prejudice and without costs or attorneys fees to any party.

Dated: New York, New York
November ____, 2010

EARTHJUSTICE

By: _____

KEVIN E. REGAN
Earthjustice
705 2nd Ave. Suite 203
Seattle, WA 98117
Telephone: (206) 343-7340 x 21
Facsimile: (206) 343-1526
E-mail: kregan@earthjustice.org
*Attorneys for National Resources Defense Council and
Pesticide Action Network North America*

PREET BHARARA
United States Attorney for the
Southern District of New York
*Attorney for Defendants the United States
Environmental Protection Agency and
Lisa P. Jackson, EPA Administrator*

By: _____

MICHAEL J. BYARS
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2793
Facsimile: (212) 637-2717
E-mail: michael.byars@usdoj.gov

SO ORDERED:

HON. COLLEEN MCMAHON
UNITED STATES DISTRICT JUDGE