

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN SOYBEAN ASSOCIATION, et al.,

Plaintiffs,

v.

No. 1:20-cv-03190-RCL

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

Federal Defendants,

and

BASF CORPORATION, et al.,

Intervenor-Defendants.

FEDERAL DEFENDANTS' UNOPPOSED MOTION FOR ABEYANCE

Federal Defendants, the U.S. Environmental Protection Agency, Acting Administrator Jane Nishida,¹ and Marietta Echeverria in her official capacity as Acting Director of the Registration Division of EPA's Office of Pesticide Programs (collectively, "EPA") respectfully request that the Court hold this case in abeyance and toll the deadline for Federal Defendants and Intervenor-Defendants to respond to the Complaint for a period of 60 days. EPA also respectfully requests that the Court toll the deadline for Federal Defendants and Intervenor-Defendants to respond to the Complaint while this Motion for Abeyance is pending. EPA consulted with counsel for Plaintiffs and Intervenor-Defendants, and no party opposes this Motion for Abeyance.

¹ Following the resignation of Administrator Andrew Wheeler, Jane Nishida has assumed the position of Acting Administrator of the U.S. Environmental Protection Agency, and is automatically substituted as a party in this case. Fed. R. Civ. P. 25(d).

This case concerns EPA's October 27, 2020 issuance of notices of registration under the Federal Insecticide, Fungicide, and Rodenticide Act for three pesticide products: the "Engenia Herbicide Registration," the "A21472 Plus VaporGrip Technology Registration," and the "XtendiMax with VaporGrip Technology Registration" (collectively, the "Registrations"). Plaintiffs filed their Complaint on November 4, 2020 (Dkt. 1), and the deadline for Federal Defendants and Defendant-Intervenors to answer or respond to the Complaint is February 10, 2021 (Minute Order, Jan. 4, 2021).

On January 20, 2021, President Biden issued Executive Order 13,990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 Fed. Reg. 7037 (Jan. 25, 2021). The Executive Order directs the heads of all agencies to "immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to" certain policies set forth in the Executive Order. *Id.* at 7037. In conformance with that Executive Order, EPA is reviewing its agency actions promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, including the Registrations at issue here. In light of that review, EPA has requested that the Department of Justice seek abeyances, stays, or extensions of time in cases challenging such agency actions, including this case. *See* Letter from Melissa A. Hoffer, Acting General Counsel, EPA, to Jean E. Williams & Bruce S. Gelber, Deputy Assistant Attorneys General, Environment & Natural Resources Division, U.S. Department of Justice (attached as Exhibit 1).

Accordingly, EPA respectfully requests that the Court hold this case in abeyance and toll the deadline for Federal Defendants and Intervenor-Defendants to respond to the Complaint for

60 days. The requested abeyance period is necessary to allow time for EPA staff to brief new leadership on the Registrations challenged here and for new EPA leadership to review the Registrations in conformance with Executive Order 13,990. It is possible that in response to this review, EPA may undertake actions that could resolve some or all of the issues in this case. Abeyance is appropriate to preserve the resources of the parties and of the Court, especially at this early stage of litigation, when the parties have not yet responded to the Complaint. Likewise, EPA requests that the Court toll the deadline for Federal Defendants and Intervenor-Defendants to respond to the Complaint while this Motion for Abeyance is pending in order to preserve the parties' and the Court's resources.

For the foregoing reasons, EPA respectfully requests that the Court hold this case in abeyance and toll the deadline for Federal Defendants and Intervenor-Defendants to respond to the Complaint for a period of 60 days. EPA also respectfully requests that the Court toll the deadline for Federal Defendants and Intervenor-Defendants to respond to the Complaint while this Motion for Abeyance is pending.

Dated: February 5, 2021

Respectfully submitted,

/s/ Andrew D. Knudsen
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CERTIFICATE OF SERVICE

I certify that on February 5, 2021, a copy of the foregoing was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Andrew D. Knudsen
Andrew D. Knudsen