NOT SCHEDULED FOR ORAL ARGUMENT

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN SOYBEAN ASSOCIATION, *Petitioner*, v. MICHAEL S. REGAN, Administrator, U.S. Environmental Protection Agency, et al., *Respondents.*	No. 20-1441 and consolidated cases

RESPONDENTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Dated: April 23, 2021

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GLOSSARY

EPA	U.S. Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
JPML	Judicial Panel on Multidistrict Litigation
NFFC	National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity, and Pesticide Action Network North America

Respondents Administrator Michael S. Regan, Acting Division Director Marietta Echeverria, and the U.S. Environmental Protection Agency (collectively, "EPA") respectfully request that the Court dismiss these consolidated petitions for review for lack of subject matter jurisdiction.

Direct appellate review of EPA's actions under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") is limited to orders "issued by the Administrator following a public hearing." 7 U.S.C. § 136n(b). Because EPA did not provide a "public hearing" within the meaning of that provision specific to the three registration orders challenged here, judicial review belongs in the district courts, and this Court lacks subject matter jurisdiction. Accordingly, the petitions for review should be dismissed.[1]

BACKGROUND

I. Pesticide Registration and Judicial Review under FIFRA

FIFRA generally precludes the distribution or sale of any pesticide unless it is "registered" by EPA. 7 U.S.C. § 136a(a). A FIFRA registration is a license that establishes the terms and conditions under which a pesticide may be lawfully sold, distributed, and used in the United States. *See id.* § 136a(c), (d). Parties seeking

[1] EPA has not yet filed a certified index of the contents of the administrative record in this case. However, no record index is necessary to decide this motion to dismiss. EPA's motion relies entirely on the challenged actions themselves and EPA's decision document supporting those actions, which are attached to this motion as Exhibits 1-4 pursuant to Circuit Rule 27(g)(2).

registration must submit an application to EPA setting forth the information required by FIFRA and EPA's implementing regulations. *Id.* § 136a(c)(1), (2); *see generally* 40 C.F.R. pt. 152. EPA shall register a pesticide if the Administrator determines that:

> A. its composition is such as to warrant the proposed claims for it;
>
> B. its labeling and other material required to be submitted comply with the requirements of [FIFRA];
>
> C. it will perform its intended function without unreasonable adverse effects on the environment; and
>
> D. when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

7 U.S.C. § 136a(c)(5).

If the application for registration includes any new active ingredient or would entail a changed use pattern, EPA must publish a notice of its receipt of the application in the Federal Register and provide a public comment period; otherwise, no public notice is required. 7 U.S.C. § 136a(c)(4). In addition, while not required by law, EPA has adopted a public participation policy to enhance transparency by offering multiple opportunities for public input on certain FIFRA actions. *See* Public Participation Process for Registration Actions, https://www.epa.gov/pesticide-registration/public-participation-process-registration-actions. This policy applies to applications for new or amended

registrations involving new active ingredients; the first food, outdoor, or residential use of a pesticide; or other actions of significant interest. *Id.* For such applications, EPA's public participation process includes, *inter alia*, notice of EPA's completed risks and benefits assessments and proposed decision on the application and an opportunity to comment on those documents. *Id.*

FIFRA contemplates two primary avenues for judicial review of EPA's actions. In section 16(b), Congress assigned the circuit courts exclusive jurisdiction to review cases involving "the validity of any order issued by the Administrator following a public hearing." *Id.* § 136n(b). In such cases, "any person who will be adversely affected by such order and who had been a party to the proceedings" may file a petition for review within 60 days after the order. *Id.* Otherwise, section 16(a) provides for district court review of certain enumerated actions and "other final actions of the Administrator not committed to the discretion of the Administrator by law." *Id.* § 136n(a).

II. The Challenged Registrations

This case concerns three EPA registration decisions—two new registrations and one amendment to an existing registration—for products that contain dicamba for use on dicamba-tolerant cotton and soybeans (the "Registrations").[2] The

[2] The three pesticide products are XtendiMax with VaporGrip Technology ("XtendiMax"), Engenia Herbicide ("Engenia"), and A21472 Plus VaporGrip Technology ("Tavium")

Registrations authorize the sale and distribution of these pesticides in 34 states and are valid until December 20, 2025. Notice of Pesticide Registration for XtendiMax with VaporGrip Technology, EPA Reg. No. 264-1210 (Oct. 27, 2020) (attached as Exhibit 1); Notice of Pesticide Registration for Engenia Herbicide, EPA Reg. No. 7969-472 (Oct. 27, 2020) (attached as Exhibit 2); Notice of Pesticide Registration for A21472 Plus VaporGrip Technology, EPA Reg. No. 100-1623 (Oct. 27, 2020) (attached as Exhibit 3); *see also* Memorandum Supporting Decision to Approve Registration for the Uses of Dicamba on Dicamba Tolerant Cotton and Soybean at 26 (Oct. 27, 2020) ("Memo") (attached as Exhibit 4).

EPA received applications for new product registrations for XtendiMax and Engenia on July 2, 2020, and received an application to amend and extend the registration date for the existing registration for Tavium on August 12, 2020. Memo at 9. EPA did not publish a notice of receipt in the Federal Register or formally solicit public comment on any of the three applications. Memo at 3, 7 n.6. EPA had previously registered various dicamba products for use on dicamba-tolerant soybeans and cotton on four separate occasions: (1) in 2016, when it registered three dicamba products (including XtendiMax and Engenia) following notice and opportunity for public comment[3]; (2) in 2017, when it amended those

[3] For the 2016 registrations, EPA provided the initial notice and comment period required by FIFRA section 3(c)(4) and additional opportunities for public comment under its public participation policy. Memo at 7 n.6.

registrations without a new public notice and comment period; (3) in 2018, when it granted the registrants' requests to extend the expiration dates of those registrations until December 2020 and approved further amendments to their terms and conditions without a new public notice and comment period; and (4) in 2019, when it registered Tavium without public notice and comment. Memo at 6-9. Because of the existing Tavium registration, no new notice or public comment period was required for the 2020 applications under FIFRA section 3(c)(4) because these applications did not involve a new active ingredient or a changed use pattern.[4] *See* 7 U.S.C. § 136a(c)(4).

Nonetheless, stakeholders were aware that EPA would likely be considering whether to amend or reissue the previous registrations before their December 2020 expiration dates. As a result, EPA did receive and consider over 120 comments related to the 2020 registration applications from stakeholders in the form of calls, emails, and letters. Memo at 7 n.6 & 10. The comments included letters from Petitioners in these consolidated cases as well as other stakeholders representing state agencies, farm bureaus, industry, growers, non-governmental organizations,

[4] The 2018 registrations of XtendiMax and Engenia were vacated in June 2020. *See Nat'l Family Farm Coal. v. EPA*, 960 F.3d 1120 (9th Cir. 2020). The determination of whether new notice is required is highly fact specific. Here, because the 2019 registration of Tavium was not vacated and remained in effect at the time of EPA's decision, EPA determined that the Registrations challenged here did not include any new uses. Memo at 3 n.2.

academia, congressional committees, and Members of Congress. *See* Memo at 10-11 (describing comment letters from American Soybean Association, Plains Cotton Growers, and Center for Food Safety).

In evaluating the applications, EPA considered these comments along with information and data from the registrants, academics, weed scientists, field experts, and the open literature. Memo at 3, 10. The record includes relevant studies and information that were considered in EPA's earlier registration actions for use of dicamba on dicamba-tolerant soybeans and cotton, including the 2016 registration that was granted after providing public notice and comment. *See* Memo at 10. EPA also considered new studies and information that were not considered in the prior registration actions, including recent studies addressing potential human health risks and new information on the availability and effectiveness of hooded sprayers and additives to reduce off-target movement of these pesticides. *See* Memo at 3, 11, 13-14.

EPA granted the Registrations on October 27, 2020. *See* Exs. 1-3. These Registrations include numerous mandatory control measures on their labeling and other terms and conditions that are more restrictive than those approved in EPA's previous registrations of dicamba-based pesticides. These requirements include: a national application cut-off date of June 30 and July 30 for soybeans and cotton, respectively; the mandatory use of additives that reduce dicamba volatility; a

prohibition on applying the pesticides within 240 feet from the downwind boundary of the treated field; restricting use to certified applicators; requirements for dicamba-specific training on the risks associated with dicamba and resistance management measures; enhanced incident and resistance reporting by the registrants; and enhanced record-keeping by applicators. *See* Memo at 3-4. Additional requirements apply in areas where plant species listed under the Endangered Species Act are present, including an expanded 310-foot downwind in-field application buffer and a 57-foot omnidirectional in-field application buffer. *See* Memo at 24.

III. Petitioners' Challenges to the Registrations

Each of the Petitioners in this case is pursuing parallel challenges to the Registrations in this Court and in the district courts. On November 4, 2020, Petitioners American Soybean Association and Plains Cotton Growers filed a complaint challenging the Registrations in the U.S. District Court for the District of Columbia. Complaint for Declaratory and Injunctive Relief, *Am. Soybean Ass'n v. EPA*, No. 20-cv-3190 (D.D.C. Nov. 4, 2020). Their complaint alleges that the district court has subject matter jurisdiction over their claims under FIFRA section 16(a), i.e., as an action that was not issued following a public hearing. *See id.* ¶ 17.

The American Soybean Association and Plains Cotton Growers also filed petitions for review of the Registrations in this Court (Nos. 20-1441 and 20-1445)

and the U.S. Court of Appeals for the Fifth Circuit (No. 20-1484), respectively. Petitioners characterize these challenges as "protective petitions" and note that they believe the Registrations are decisions "'not following a hearing'" that are "'judicially reviewable by the district courts of the United States,'" not the appellate courts. *See* Am. Soybean Ass'n Petition for Review at 3, ECF 1870257 (quoting 7 U.S.C. § 136n(a)).

On December 1, 2020, pursuant to 28 U.S.C. § 2112(a), EPA submitted a notice of multicircuit petitions for review to the Judicial Panel on Multidistrict Litigation ("JPML"). On December 3, 2020, the JPML randomly selected this Court as the court in which to consolidate the petitions for review of the Registrations and issued a consolidation order. *See* ECF 1874319.

On December 21, 2020, Petitioners National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity, and Pesticide Action Network North America (collectively, "NFFC") filed a petition for review of the Registrations in the U.S. Court of Appeals for the Ninth Circuit. *See* NFFC Petition for Review, *Nat'l Family Farm Coal. v. EPA*, No. 21-1043 (D.C. Cir.), ECF 1883191. In its petition, NFFC asserts appellate court jurisdiction to review the Registrations "[p]ursuant to Section 16(b) of" FIFRA. *Id.* at 1. NFFC also asserts that the Registrations "are closely related to the earlier [2016 and 2018 dicamba] registration decisions by EPA over the same pesticide products

previously challenged by [NFFC] and reviewed by [the Ninth Circuit] pursuant to section 16(b) of FIFRA . . . ." *Id.* at 3; *see also id.* (quoting *Nat'l Family Farm Coal.*, 960 F.3d at 1132) (noting Ninth Circuit found it had jurisdiction to review 2018 dicamba registrations because they arose from "the related 2016 registration decision"). NFFC's petition was transferred to this Court under 28 U.S.C. 2112(a)(5) and consolidated with the other challenges to the Registrations. *See* ECF 1883240.

On December 23, 2020, NFFC also filed a complaint challenging the Registrations in the U.S. District Court for the District of Arizona. Complaint for Declaratory & Equitable Relief, *Ctr. for Biological Diversity v. EPA*, No. 20-cv-555 (D. Az. Dec. 23, 2020). Their complaint alleges that the district court has subject matter jurisdiction under FIFRA section 16(a) because EPA issued the Registrations "without a public hearing." *Id.* ¶ 23; *see also id.* ¶ 60; Proposed First Amended Complaint for Declaratory & Equitable Relief ¶¶ 25, 62, *Ctr. for Biological Diversity v. EPA*, No. 20-cv-555 (D. Az. Apr. 14, 2021) (alleging same in proposed amended complaint).

In the present case, this Court granted EPA's motion to extend the deadlines for procedural motions, dispositive motions, and a certified index to the record on December 7, 2020, and granted EPA's motion for abeyance on February 8, 2021.

ECF 1874576, 1884167. Motions to govern further proceedings are currently due by April 23, 2021. ECF 1894081.

STANDARD OF REVIEW

At all stages of the case, Petitioners bear the burden of demonstrating that subject matter jurisdiction exists. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (recognizing "[t]he requirement that jurisdiction be established as a threshold matter" and that "[w]ithout jurisdiction the court cannot proceed at all in any cause") (internal quotation omitted). Petitioners cannot meet that burden here.

ARGUMENT

The petitions for review should be dismissed because this Court lacks subject matter jurisdiction. Under FIFRA, "[d]irect judicial review of the agency's action in a court of appeals is precluded unless there is a 'controversy as to the validity of [an] order issued by the Administrator [of EPA] following a public hearing.'" *Humane Soc'y of U.S. v. EPA*, 790 F.2d 106, 110 (D.C. Cir. 1986) (quoting 7 U.S.C. § 136n(b)) (second and third alterations in original). FIFRA does not define what constitutes a "public hearing," but the case law and statutory context indicate that, at a minimum, there must be some public notice of the

agency's pending action.[5] While EPA received unsolicited comments and compiled a lengthy administrative record in reaching the decisions challenged here, it did not provide notice to the public specific to its receipt of the 2020 applications or of its proposed decision before issuing the Registrations. Thus, the Registrations are not orders issued "following a public hearing," and this Court does not have subject matter jurisdiction to review them.

I. A "Public Hearing" for Purposes of FIFRA Section 16(b) Requires Some Public Notice of EPA's Pending Action.

Congress did not define the term "public hearing" for purposes of FIFRA section 16(b). Courts have clarified that a public hearing does not require an "adjudicative process" or a "quasi-judicial" proceeding. *Ctr. for Biological Diversity v. EPA*, 861 F.3d 174, 187 (D.C. Cir. 2017) ("*CBD I*"); *United Farm Workers of America, AFL-CIO v. Adm'r, EPA*, 592 F.3d 1080, 1083 (9th Cir. 2010). Generally, courts have found appellate jurisdiction under section 16(b) where EPA provided public notice and an opportunity for comment on the challenged action. *See, e.g.*, *CBD I*, 861 F.3d at 187 (finding challenged registration order "comes after a 'public hearing' by way of three notice and comment periods"). And in evaluating whether an action followed a public hearing, this Court has considered whether EPA's process was sufficient to

[5] EPA expresses no position here regarding what form, medium, or timing of notice to the public is required for purposes of FIFRA section 16(b).

establish "an adequate record for review in a court of appeals." *Humane Soc'y*, 790 F.2d at 111 (citing *Envtl. Defense Fund, Inc. v. Costle*, 631 F.2d 922, 930-31 (D.C. Cir. 1980)).

This Court has not directly addressed whether a registration order for which EPA did not provide specific public notice may constitute an "order following a public hearing" under section 16(b). However, the case law indicates that public notice is a necessary element of a public hearing for purposes of appellate jurisdiction under FIFRA. Moreover, FIFRA's limitation of direct appellate review to challenges brought by any person "who had been a party to the proceedings" strongly suggests that, at a minimum, a public hearing must include public notice of the action to be taken to potentially affected persons. *See* 7 U.S.C. § 136n(b).

A. Case Law

The weight of the case law interpreting FIFRA section 16(b) indicates that public notice of EPA's pending action is required for a public hearing. In *United Farm Workers*, the Ninth Circuit held that the term "hearing" "identifies elements essential in any fair proceeding—*notice be given of a decision to be made* and presentation to the decisionmaker of the positions of those to be affected by the decision." 592 F.3d at 1082 (emphasis added). Consistent with that principle, the decisions of this Court and others finding appellate jurisdiction under section 16(b)

have involved some notice by EPA to potentially affected parties. *See CBD I*, 861 F.3d at 187 (noting EPA provided "three notice and comment periods"); *Humane Soc'y*, 790 F.2d at 111-12 (noting EPA published notices of experimental use permit application receipt in Federal Register); *Nat'l Grain Sorghum Producers Ass'n v. EPA*, 1996 WL 250327, *2-*3 (D.C. Cir. Apr. 22, 1996) (finding jurisdiction where EPA provided notice of proposed action in Federal Register); *National Family Farm Coal.*, 960 F.3d at 1132 (finding 2018 dicamba registration decision amending and extending 2016 dicamba registrations followed a public hearing because it "arises from a notice-and-comment period held prior to" the original registration decision); *Ctr. for Biological Diversity v. EPA*, 847 F.3d 1075, 1090 (9th Cir. 2017) ("*CBD II*") (noting registrations were "preceded by a public comment and notice period published in the Federal Register"); *United Farm Workers*, 592 F.3d at 1082 (finding "the plain meaning of 'hearing' is satisfied by" notice and comment process); *Defs. of Wildlife v. Jackson*, 791 F. Supp. 2d 96, 102 n.3 (D.D.C. 2011) ("Courts have generally interpreted [public hearing requirement] to include Agency orders following public notice and comment.").

Conversely, courts have found that no public hearing was held in cases where EPA did not give public notice of the action being challenged. In *Northwest Food Processors Association v. Reilly*, the Ninth Circuit considered challenges to an EPA order that canceled a pesticide's registration and allowed some limited use

of existing stocks of the pesticide. 886 F.2d 1075 (9th Cir. 1989). The court found that EPA's cancellation decision followed a public hearing because EPA had held proceedings on the issue "in which interested parties are afforded an opportunity to present their positions by written briefs . . . ," noting favorably that those cancellation proceedings "were conducted pursuant to notice." *Id.* at 1077-78. But it held the existing stocks decision did not follow a public hearing because EPA's notice for the cancellation proceeding had not put parties on notice that EPA would be addressing the treatment of existing stocks. *Id.* at 1078.

Likewise, in *Center for Biological Diversity v. EPA* ("*CBD III*"), a district court held that public notice and comment on an earlier action are insufficient to constitute a public hearing for a later, related action for which EPA did not give public notice. 316 F. Supp. 3d 1156 (N.D. Cal. 2018). A party argued that although EPA had not provided notice and comment on the challenged orders reregistering certain pesticides, those orders nonetheless followed a public hearing because EPA had provided notice and comment on its earlier decisions finding those pesticides *eligible* for reregistration. *Id.* at 1172-73. The court found that the earlier proceedings did not satisfy section 16(b) because they had not put the public on notice of any of the actual decisions being challenged. *Id.* at 1174; *see id.* at 1173 (noting Federal Register notices for eligibility decisions "stopped short of stating intent to actually reregister those products on any particular terms").

This Court's decision in *Environmental Defense Fund v. Costle*, 631 F.2d 922 (D.C. Cir. 1980), is not to the contrary. There, the Court found that the challenged action followed a public hearing because EPA's proceedings had produced a record that was "wholly adequate for judicial review" despite the apparent lack of notice to the broader public. *Id.* at 932; *see id.* at 927 (alleging "lack of public notice"). But the procedural background of *Costle* was unusual: the petitioner did not challenge EPA's decision cancelling a pesticide registration, but rather EPA's decision denying the petitioner's request for an administrative hearing on that cancellation. *Id.* at 930. Accordingly, the case is distinguishable. Because the EPA order in question was merely a decision to deny the petitioner's request for an administrative hearing, the universe of potentially affected parties was much smaller than for other EPA actions under FIFRA. Thus, *Costle* does not address whether notice to the broader public is necessary to provide a "public hearing" for actions that may affect a wider range of parties.

B. Statutory Context

The surrounding statutory text in section 16(b) also strongly suggests that a public hearing requires, at a minimum, notice to potentially affected parties. *See Abramski v. United States*, 573 U.S. 169, 179 (2014) (noting that in interpreting statute, courts must "interpret the relevant words not in a vacuum, but with reference to the statutory context, structure, history, and purpose") (internal

quotation marks omitted). Section 16(b) assigns the circuit courts "exclusive jurisdiction" to review orders issued following a public hearing. 7 U.S.C. § 136n(b). That same provision also limits who may challenge such an action. Where EPA issues an order following a public hearing, only a person "who will be adversely affected by such order and who had been a party to the proceedings" may file a petition for review. *Id.*

This limitation on who may seek review informs the meaning of the term "public hearing" in section 16(b). By restricting judicial review to those persons who participate in the proceedings, Congress implied that a "public hearing" triggering exclusive appellate review must be one that includes some notice of EPA's pending action to potentially affected parties. Reading "public hearing" to require some public notice is necessary to allow parties to preserve their ability to seek judicial review.

A contrary interpretation could lead to cases where a party is barred from seeking review of agency action under FIFRA despite never having an opportunity to comment on it. For example, if public notice is not required for a public hearing under section 16(b), then the circuit courts could obtain exclusive jurisdiction to review an order based on EPA's consideration of unsolicited comments from a subset of potentially affected parties. A party that claims to be adversely affected by the order but did not submit comments would be barred from seeking review in

either the circuit courts (because it was not a "party to the proceedings" before EPA) or the district courts (because of the circuit courts' "exclusive jurisdiction") even though EPA did not notify the public of its pending action. *See* 7 U.S.C. § 136n(b). Although there is no indication that has occurred in this case, an interpretation of "public hearing" that allows potentially affected parties to be barred from judicial review without prior notice of the agency's action would remove one of the "elements essential in any fair proceeding" from section 16(b). *See United Farm Workers*, 592 F.3d at 1082.

Accordingly, both the relevant case law and the statutory context indicate that a "public hearing" for the purposes of FIFRA section 16(b) must include some notice of EPA's action to potentially affected parties.

II. Subject Matter Jurisdiction is Lacking Because EPA Did Not Issue the Registrations Following a Public Hearing.

EPA did not provide public notice specific to its pending actions prior to issuing the Registrations. *Supra* p. 4. As a result, the Registrations are not orders following a public hearing, and this Court lacks subject matter jurisdiction to hear these petitions for review. Notably, Petitioners appear to acknowledge (in their filings before this Court or in their parallel district court challenges) that EPA did not provide public notice specific to the 2020 Registrations. *Supra* pp. 7-9; *see* Petitioners' Motion to Transfer Consolidated Petitions for Review to Ninth Circuit Pursuant to 28 U.S.C. § 2112(a)(5) at 11 n.5, ECF 1895679.

EPA did provide public notice and seek public comments on its 2016 registration of dicamba for use on dicamba-tolerant crops.[6] *Supra* p. 4 n.3. And despite the lack of specific notice of its 2020 Registration decisions, EPA did receive a significant number of comment letters, calls, and emails both supporting and opposing the registration applications. *Supra* pp. 5-6. EPA considered these unsolicited comments, along with both new and previously considered studies and other information from a wide variety of sources, as part of the extensive administrative record supporting these Registrations. *Supra* p. 6. Under other circumstances, these proceedings may have been sufficient to qualify as a "public hearing" under section 16(b). *See CBD I*, 861 F.3d at 187 (finding public hearing occurred where EPA provided opportunity for comment, petitioners "took advantage of these opportunities to be heard and provided significant input," and EPA amassed a record that was "wholly adequate for judicial review") (internal quotation marks omitted).

[6] NFFC may argue that the 2020 Registrations followed a "public hearing" on the theory that they arise from the notice and comment period preceding the 2016 registrations, citing the Ninth Circuit's decision in *National Family Farm Coalition*. That case's rationale does not apply here. The 2020 Registrations did not arise from any prior notice and comment proceedings because those actions had been vacated. *See* 960 F.3d at 1145. Moreover, the public did not have specific notice as to key aspects of EPA's decision on the 2020 Registrations that were not included in any prior dicamba registration action.

Nonetheless, because the Registrations were not preceded by specific public notice, they lack an "essential" minimum element necessary for a public hearing. *See United Farm Workers*, 592 F.3d at 1082. EPA did not (and was not required to) publish notice of its receipt of the applications or its proposed decisions regarding the Registrations. *Supra* p. 4. As a result, the public was not on notice of the specifics of the EPA decision to register these dicamba products, let alone that it "inten[ded] to actually [register] those products on any particular terms." *CBD III*, 316 F. Supp. 3d at 1173. Without such notice, the Registrations are not orders following a public hearing, and any judicial review belongs in the district courts under FIFRA section 16(a). Accordingly, this Court lacks subject matter jurisdiction and must dismiss the petitions for review.

CONCLUSION

For the foregoing reasons, EPA respectfully requests that the Court dismiss these consolidated petitions for review for lack of subject matter jurisdiction.

Respectfully submitted,

Dated: April 23, 2021

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the typeface and type style requirements of Fed. R. App. P. 27(d)(1) and the word limit of Fed. R. App. P. 27(d)(2) because it was typed using 14-point Times New Roman font and, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 4,353 words.

Respectfully submitted,

Dated: April 23, 2021

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ANDREW D. KNUDSEN

Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that on this 23d day of April, 2021, I filed the foregoing via the Court's CM/ECF system, which will provide electronic notice to all registered counsel. The foregoing document will be served by first class mail on the following counsel:

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