

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

AMERICAN SOYBEAN ASSOCIATION, et al.,

Plaintiffs,

v.

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

Federal Defendants,

and

BASF CORPORATION, et al.,

Intervenor-Defendants.

No. 1:20-cv-03190-RCL

**FEDERAL DEFENDANTS' NOTICE OF DECISION BY D.C. CIRCUIT AND
CONSENT MOTION FOR STAY**

Pursuant to the Court's Order of September 3, 2021 (Dkt. 72), Federal Defendants, the U.S. Environmental Protection Agency, et al. ("EPA"), respectfully submit this notice of the D.C. Circuit's decision and issuance of the mandate in *American Soybean Association v. Regan*, No. 20-1441 and consolidated cases. In light of the D.C. Circuit's issuance of the mandate in that case, EPA respectfully requests that the Court continue to stay this case and direct the parties to file motions to govern further proceedings in this case by October 4, 2023. Counsel for EPA has conferred with counsel for Plaintiffs, the American Soybean Association and Plains Cotton Growers, Inc. (together, the "Growers"), and counsel for Intervenor-Defendants, who represented that they consent to the relief requested.

EPA reports as follows:

1. The Growers filed this suit on November 4, 2020. (Dkt. 1). The Growers allege that EPA violated the Federal Insecticide, Fungicide, and Rodenticide Act, the Endangered Species Act (“ESA”), and the Administrative Procedure Act in its decisions to register three dicamba-based pesticide products for use on dicamba tolerant cotton and soybeans (the “2020 Registrations”). *See* Amended Complaint (Dkt. 50).

2. EPA has not filed an answer in this case. On April 6, 2021, EPA moved for partial dismissal of Counts II and IV of the Growers’ original Complaint. (Dkt. 43). On April 27, 2021, the Growers filed an Amended Complaint. (Dkt. 50). On June 1, 2021, EPA filed a motion to dismiss the ESA challenges in the Growers’ Amended Complaint. (Dkt. 57). EPA’s motion to dismiss was fully briefed.

3. Several petitioners, including the Growers, filed petitions for review of the 2020 Registrations in the federal circuit courts of appeals under 7 U.S.C. § 136n(b). The Growers’ petition for review was styled as a protective petition intended to preserve the Growers’ ability to challenge the 2020 Registrations in the event that subject matter jurisdiction was found to lie in the appellate courts under 7 U.S.C. § 136n(b) rather than in the district courts under 7 U.S.C. § 136n(a). The petitions for review were consolidated in the D.C. Circuit under *American Soybean Association v. Regan*, No. 20-1441.

4. EPA moved to dismiss the petitions for review for lack of subject matter jurisdiction. *See* ECF No. 1895893, *Am. Soybean Ass’n v. Regan*, No. 20-1441 (D.C. Cir. Apr. 23, 2021). On July 14, 2021, the D.C. Circuit referred EPA’s motion to dismiss to the merits panel and ordered

the parties to proceed to merits briefing and argument.¹ ECF No. 1906276, *Am. Soybean Ass'n v. Regan*, No. 20-1441 (D.C. Cir. July 14, 2021).

5. On July 23, 2021, EPA requested that the Court stay this case pending issuance of the D.C. Circuit's mandate in *American Soybean Association v. Regan*, No. 20-1441. (Dkt. 64). On September 3, 2021, the Court granted the stay and ordered EPA to "notify the Court within seven days after the issuance of the mandate" in the D.C. Circuit case. (Dkt. 72).

6. On March 15, 2022, EPA approved label amendments for the pesticide registrations at issue in this litigation (the "2022 Amendments"). (Dkt. 74). On May 9, 2022, the Growers moved for leave to file a "Supplemental Amended Complaint" addressing the 2022 Amendments. (Dkt. 75). The Court granted the Growers' motion and ordered EPA to "file [its] response or answer to the Supplemental Amended Complaint twenty-one (21) days after the Court lifts the stay." (Dkt. 76).

7. On February 16, 2023, EPA approved additional label amendments for the pesticide registrations at issue in this litigation (the "2023 Amendments"). (Dkt. 77). The Growers have not yet sought to amend their operative complaint to address the 2023 Amendments.

8. Briefing in the D.C. Circuit case concluded on September 28, 2022, and the case was argued on December 8, 2022. On July 21, 2023, the D.C. Circuit dismissed the petitions for review in a published opinion. *American Soybean Association v. Regan*, 77 F.4th 873 (D.C. Cir. 2023). The court held that because the 2020 Registrations and 2022 Amendments were not

¹ The other petitioners in the D.C. Circuit elected to voluntarily dismiss their petition for review and pursue their challenge to the 2020 Registrations in the U.S. District Court for the District of Arizona. *Center for Biological Diversity v. EPA*, No. 4:20-cv-00555-DCB (D. Ariz.). Briefing on the parties' cross-motions for summary judgment in that district court case concluded on July 27, 2023.

issued following a “public hearing” under 7 U.S.C. § 136n(b), the circuit courts lack subject matter jurisdiction and review properly lies in the district courts. *See* 77 F.4th at 880.

9. The D.C. Circuit issued its mandate on September 13, 2023. ECF 2016775, *Am. Soybean Ass’n v. Regan*, No. 20-1441 (D.C. Cir. Sept. 13, 2023) (attached as Exhibit A).

10. EPA respectfully requests that the Court issue an order continuing the stay and direct the parties to file motions to govern further proceedings in this case by October 4, 2023. Such an order will provide additional time for the parties to confer regarding the impact on this case (if any) of developments occurring while this case was stayed, including the 2023 Amendments and the proceedings in *Center for Biological Diversity v. EPA*, No. 4:20-cv-00555-DCB (D. Ariz.).

Dated: September 20, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 20, 2023, 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
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