

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

AMERICAN SOYBEAN ASSOCIATION,

*Petitioner,*

vs.

ANDREW R. WHEELER, Administrator.  
U.S. Environmental Protection Agency,

and

MARIETTA ECHEVERRIA, Acting  
Division Director, U.S. Environmental  
Protection Agency, Office of Pesticide  
Programs, Registration Division,

and

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

*Respondents.*

Case No.: 20-1441

**PETITION FOR REVIEW**

Under Rule 15 of the Federal Rules of Appellate Procedure, D.C. Circuit Rule 15, 7 U.S.C. § 136n(b), 5 U.S.C. § 706, and 16 U.S.C. § 1536, the American Soybean Association hereby petitions this Court for review of the final actions taken by the United States Environmental Protection Agency (“EPA”) titled: the Engenia Herbicide Registration (the “Engenia Registration,” a true and correct copy of which is attached as **Exhibit A**), the A21472 Plus VaporGrip Technology Registration (the “Tavium Registration,” a true and correct copy of which is attached as **Exhibit B**), and the XtendiMax with VaporGrip Technology Registration (the

“Xtendimax Registration,” a true and correct copy of which is attached as **Exhibit C**).<sup>1</sup> EPA issued the Engenia Registration, the Tavium Registration, and the XtendiMax Registration on October 27, 2020 and published the decisions and supporting documents to the Federal Docket Management System (Regulations.gov) under docket number EPA-HQ-2020-0492.

Petitioner submits that the Engenia Registration, the Tavium Registration, and the XtendiMax Registration violate the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), Endangered Species Act (“ESA”), and Administrative Procedures Act (“APA”) by imposing registration conditions that exceed statutory authority, are arbitrary and capricious, are an abuse of discretion, are not supported by substantial evidence when considered on the record as a whole, and are not otherwise in accordance with law. *See, e.g.*, 7 U.S.C. §§ 136(a), 136n(b); 5 U.S.C. § 706; 16 U.S.C. § 1536. Thus, Petitioner respectfully requests that this Court, if necessary, hold those registration conditions unlawful, remand the Engenia Registration, the Tavium Registration, the XtendiMax Registration, and supporting analyses and decision documents to Respondents without vacatur, hold the remainder of the Engenia Registration, the Tavium

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<sup>1</sup> EPA supported those final actions with several analysis and decision documents: Memorandum Supporting Decision to Approve Registration for the Uses of Dicamba on Dicamba Tolerant Cotton and Soybean (the “Dicamba Memorandum”, a true and correct copy of which is attached as **Exhibit D**); “Dicamba Use on Genetically Modified Dicamba-Tolerant (DT) Cotton and Soybean: Incidents and Impacts to Users and Non-Users from Proposed Registrations” (the “Incidents and Impacts Report,” a true and correct copy of which is attached as **Exhibit E**), “Consideration of Newly Submitted Mutagenicity Data and Human Health Risk Assessment Summary” (the “HRA Report,” a true and correct copy of which is attached as **Exhibit F**), “Dicamba DGA and BAPMA Salts – 2020 Ecological Assessment of Dicamba Use on Dicamba-Tolerant (DT) Cotton and Soybean Including Effects Determinations for Federally Listed Threatened and Endangered Species” (the “ESA Assessment,” a true and correct copy of which is attached as **Exhibit G**), Assessment of the Benefits of Dicamba Use in Genetically Modified, Dicamba-Tolerant Cotton Production (the “Cotton Benefits Assessment,” a true and correct copy of which is attached as **Exhibit H**), and Assessment of the Benefits of Dicamba Use in Genetically Modified, Dicamba-Tolerant Soybean Production (the “Soybean Benefits Assessment,” a true and correct copy of which is attached as **Exhibit I**).

Registration, the XtendiMax Registration, and the supporting analyses and decision documents lawful, award Petitioner its costs and reasonable attorneys' fees, and grant such further relief as may be just and proper.

This is a protective petition. Petitioner believes the challenged actions are decisions “not following a hearing and [are] final action[s] of the [EPA] Administrator not committed to the discretion of the Administrator,” making them “judicially reviewable by the district courts of the United States.” 7 U.S.C. § 136n(a). But out of an abundance of caution, particularly because FIFRA requires that challenges “to the validity of any order issued by the Administrator following a public hearing” be brought within sixty days, Petitioner submits this petition protectively, to preserve its claims. 7 U.S.C. 136n(b).

Dated: November 5, 2020

Respectfully submitted,

/s/ Edmund S. Sauer

Bartholomew J. Kempf, Esq.

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**RULE 26.1 DISCLOSURE STATEMENT**

Under Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Petitioner makes the following disclosures:

Petitioner American Soybean Association has no parent companies and no publicly held company holds ten percent or greater ownership interest in the American Soybean Association.

The American Soybean Association, a corporation organized and existing under the laws of the State of Missouri, is a national non-profit trade association representing U.S.

soybean growers on domestic and international issues of importance to the American soybean industry.

Dated: November 5, 2020

Respectfully submitted,

/s/ Edmund S. Sauer

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing Petition for Review and Rule 26.1 Disclosure Statement on Respondents through First Class U.S. Mail, return receipt requested, to each of the following addresses on this 5th day of November 2020:

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/s/ Edmund S. Sauer  
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