

**FILED**

UNITED STATES COURT OF APPEALS

APR 29 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NATIONAL FAMILY FARM  
COALITION; et al.,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY; ANDREW WHEELER, in his  
official capacity as Administrator,

Respondents,

MONSANTO COMPANY,

Respondent-Intervenor.

No. 19-70115

Environmental Protection Agency

**ORDER**

Before: HAWKINS, McKEOWN, and W. FLETCHER, Circuit Judges.

On October 31, 2018, EPA signed a decision announcing that it “will be granting requests by Bayer CropScience (formerly Monsanto Company), Corteva (formerly DuPont), and BASF to amend their existing conditional registrations that contain expiration dates of November 9, 2018, and December 20, 2018, respectively.” ER 3. Pursuant to this decision, EPA issued three conditional registrations. On November 1, 2018, EPA issued a conditional registration to Bayer CropScience for its “M1768 Herbicide” [“XtendiMax With VaporGrip

Technology”]. ER 65, 81. On November 2, 2018, EPA issued a conditional registration to BASF for its “Engenia Herbicide.” ER 167. On November 5, 2018, EPA issued a conditional registration to Corteva for its “DuPont FeXapan Herbicide.” ER 121.

In a petition to our Court, National Family Farm Coalition et al. challenged the decision of EPA. Petitioners’ brief begins: “This petition seeks review of the October 31, 2018, decision by the United States Environmental Protection Agency (EPA) to continue the new uses registrations of the pesticide dicamba on dicamba-resistant cotton and soybean. . . . Petitioners timely filed this petition for review.” Blue Brief at 1. Petitioners write further: “This case concerns a pesticide Intervenor Monsanto developed, ‘XtendiMax with VaporGrip Technology’ (XtendiMax), containing the weed-killing active ingredient dicamba. ER0003–4.” *Id.* at 2. They append a footnote to this sentence: “The registration also covers the competitor dicamba varieties approved by EPA for the same uses. ER0004–5, tbl.2; ER121–ER 0210. We use XtendiMax for simplicity.” *Id.* at 2, n.4.

EPA writes in its brief: “Although not at issue here, EPA has issued registrations for two other dicamba products for the same uses, Engenia and FeXapan. EPA Reg. Nos. 7969-345 and 352-913. EPA’s 2018 registration action also amended the Engenia and FeXapan registrations.” Red Brief at 12–13, n.3.

The parties thus appear to disagree as to the scope of the challenge before us. As we read the petitioners' brief, they seek to challenge the entirety of the registration decision promulgated by the EPA on October 31, 2018, approving conditional registrations for post-emergent application of dicamba herbicides manufactured by Bayer CropScience, Corteva, and BASF. As we read EPA's brief, it contends that petitioners' challenge extends only to the conditional registration for post-emergent application of the dicamba herbicide manufactured by Bayer CropScience.

The briefing now before this Court does little more than to indicate disagreement between the parties. The Court would be assisted by more sustained briefing on the scope of petitioners' challenge. Within fourteen days of the issuance of this order, the parties, including Intervenor Bayer CropScience, are directed to provide simultaneous letter briefs addressing the scope of petitioners' challenge. The briefs are to be no longer than ten pages of text, double-spaced, in size 14 font.