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ENDORSED
FILED
ALAMEDA COUNTY

JUL - 8 2014

CLERK OF THE SUPERIOR COURT

By Olivia Barbero Deputy

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

PESTICIDE ACTION NETWORK NORTH
AMERICA, CENTER FOR FOOD SAFETY, and
BEYOND PESTICIDES, non-profit organizations,

Petitioners and Plaintiffs,

vs.

CALIFORNIA DEPARTMENT OF PESTICIDE
REGULATION, a state agency; BRIAN R.
LEAHY, in his official capacity as Director of
Pesticide Regulation; ANN M. PRICHARD, in her
official capacity as Branch Chief, Pesticide
Registration Branch, and DOES 1 through 10,

Respondents and Defendants.

and

VALENT U.S.A. CORPORATION, MITSUI
CHEMICALS AGRO, INC., for-profit
corporations; and DOES 11 through 20,

Real Parties in Interest.

Case No.:

RG 14731906

PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1
2 1. In 2006, honeybees began dying at unprecedented rates. Today, whether honeybees
3 will survive and recover in America is uncertain, and so we have reached the point of agricultural
4 and environmental crisis. About one-third of the food we eat – and an even greater proportion of our
5 overall nutrition – comes from plants that will not make fruit or seed unless they are pollinated by a
6 bee. The crisis is especially acute in California, because we are the largest producer of crops that
7 require honeybees for pollination, including our most valuable crop: almonds.

8 2. While the reasons for the honeybee collapse are complex, scientists have identified
9 chronic exposure to insecticides as a significant factor. In particular, scientists have pointed to a
10 family of insecticides called “neonicotinoids,” which were developed in the late 1990s and are now
11 ubiquitous in agriculture. Neonicotinoids are long lasting and highly toxic to honeybees, and there is
12 ample scientific evidence that their use has exacerbated – if not triggered – the honeybee crisis.

13 3. None of this is news to the California Department of Pesticide Regulation (“DPR”).
14 In early 2009, DPR was compelled to initiate a “reevaluation” as to whether use of neonicotinoids
15 should be curtailed, based on evidence that they may be devastating honeybees. Over five years
16 later, DPR’s reevaluation remains ongoing with no end in sight, and DPR has taken no significant
17 steps to protect honeybees. And DPR’s foot-dragging is only part of the problem. Pending its
18 reevaluation, DPR has not hesitated to make the existing problem worse by expanding the use of
19 neonicotinoids without any meaningful analysis of the impact to bees or feasible alternatives, in
20 violation of the California Environmental Quality Act (“CEQA”) and other laws. DPR’s actions are
21 consistent with the agency’s illegal pattern and practice of rubber-stamping applications to approve
22 new pesticides without first complying with laws enacted to ensure that they are safe.

23 4. By this action, Pesticide Action Network North America, Center for Food Safety, and
24 Beyond Pesticides (collectively, “Petitioners”) challenge DPR’s June 13, 2014 decision to expand
25 the use of two neonicotinoid insecticides – Venom Insecticide and Dinotefuran 20SG – in violation
26 of CEQA and other laws. Petitioners seek a writ of mandate directing DPR to set aside its approval
27 of Venom Insecticide and Dinotefuran 20SG pending the agency’s reevaluation of neonicotinoids
28 and compliance with CEQA, as well as other declaratory and injunctive relief as set forth below.

1 **JURISDICTION AND VENUE**

2 5. This Court has jurisdiction to review DPR's June 13, 2014 decisions with respect to
3 Venom Insecticide and Dinotefuran 20SG under Code of Civil Procedure sections 1085, 1087 and/or
4 1094.5 and Public Resources Code section 21080.5, subdivision (g). The Court has jurisdiction to
5 issue declaratory relief under Code of Civil Procedure section 1060 and injunctive relief under Code
6 of Civil Procedure section 525, *et seq.*

7 6. Venue is proper in this Court under Code of Civil Procedure section 395, subdivision
8 (a), and section 401, subdivision (1), because DPR is a state agency based in Sacramento County and
9 the California Attorney General has an office in Alameda County.

10 7. Pursuant to Public Resources Code section 21080.5, subdivision (g), Petitioners filed
11 this action within 30 days after DPR filed its Notice of Final Decisions on June 13, 2014.

12 8. Petitioners have provided DPR with written notice of their intention to file this
13 petition and complaint. (See Exhibit A hereto.)

14 9. Petitioners have served the Attorney General with a copy of this petition and
15 complaint, together with a notice of its filing. (See Exhibit B hereto.)

16 10. Petitioners are filing concurrently with this petition and complaint a request that DPR
17 prepare the record of administrative proceedings relating to the agency actions at issue.

18 11. Petitioners participated in the administrative processes surrounding both DPR's
19 reevaluation of neonicotinoids and DPR's decisions with respect to Venom Insecticide and
20 Dinotefuran 20SG. Petitioners exhausted all of their administrative remedies prior to filing this
21 action.

22 12. Petitioners have no plain, speedy or adequate remedy in the course of ordinary law.
23 Petitioners will suffer irreparable harm unless the Court grants the relief requested herein.

24 **PARTIES**

25 13. Petitioner and plaintiff PESTICIDE ACTION NETWORK NORTH AMERICA
26 ("PANNA") is a San Francisco-based non-profit organization that serves as an independent regional
27 center for Pesticide Action Network International, a coalition of over 600 public interest
28 organizations in more than 90 countries. PANNA provides scientific expertise, public education,

1 access to pesticide data and analysis, policy development and other support to its 225 member
2 organizations.

3 14. Petitioner and plaintiff CENTER FOR FOOD SAFETY (“CFS”) is a national non-
4 profit public interest and environmental advocacy organization working to protect human health and
5 the environment by curbing the use of harmful food production technologies and by promoting
6 organic and other forms of sustainable agriculture. CFS also educates consumers concerning the
7 definition of organic food and products. CFS uses legal actions, groundbreaking scientific and
8 policy reports, books and other educational materials, market pressure and grass roots campaigns
9 through its True Food Network.

10 15. Petitioner and plaintiff BEYOND PESTICIDES (“BP”) (formerly National Coalition
11 Against the Misuse of Pesticides) is a nonprofit organization headquartered in Washington, D.C. that
12 works with allies in protecting public health and the environment to lead the transition to a world
13 free of toxic pesticides. The founders, who established Beyond Pesticides in 1981, felt that without
14 the existence of such an organized, national network, local, state and national pesticide policy would
15 become, under chemical industry pressure, increasingly unresponsive to public health and
16 environmental concerns. The organization’s primary goal is to effect change through local action,
17 assisting individuals and community-based organizations to stimulate discussion on the hazards of
18 toxic pesticides, while providing information of safe alternatives.

19 16. Consistent with their organizational missions and on behalf of their members and
20 supporters, all Petitioners have engaged in longstanding campaigns to protect honeybees and other
21 pollinators from pesticides, including neonicotinoids. Among other things, Petitioners have worked
22 to reform DPR’s pesticide registration and reevaluation processes so that pesticides that are harmful
23 to bees are subject to adequate and legally required restriction and oversight.

24 17. Petitioners bring this action on their own behalf and on behalf of their members,
25 employees, and supporters who are residents and taxpayers of the state of California, and who are
26 adversely affected by the actions of DPR as described herein. As a result of DPR’s failures to
27 comply with its legal obligations, Petitioners, their members, and the public at large have suffered
28 injury and will continue to be injured by DPR’s unlawful actions, unless and until this Court

1 provides the relief requested. In particular, DPR's pattern and practice of registering neonicotinoids
2 – including Venom Insecticide and Dinotefuran 20SG – in the absence of appropriate environmental
3 review causes permanent or long-lasting impacts to honeybees and important food crops. DPR's
4 illegal actions have had and will continue to have an adverse impact on Petitioners' members'
5 health, as well as their financial, environmental, recreational, and agricultural interests.

6 18. By this action, Petitioners seek to protect the above-described interests of their
7 members, employees, and supporters and the general public and to enforce a public duty owed to
8 them by DPR. Petitioners and their staff and members have a right to, and a beneficial interest in,
9 DPR's performance of its duties under CEQA and the Food and Agricultural Code. These interests
10 have been threatened by DPR's actions with respect to neonicotinoids generally and Venom
11 Insecticide and Dinotefuran 20SG specifically.

12 19. Respondent and defendant CALIFORNIA DEPARTMENT OF PESTICIDE
13 REGULATION is a department within the California Environmental Protection Agency. DPR is
14 charged with enforcing state and federal laws regulating pesticide use in California. DPR is
15 responsible for registering and reevaluating all pesticides used in California.

16 20. Respondent and defendant BRIAN R. LEAHY is the Director of Pesticide Regulation
17 at DPR and is being sued in his official capacity.

18 21. Respondent and defendant ANN M. PRICHARD is Chief of DPR's Pesticide
19 Registration Branch and is being sued in her official capacity. Ms. Prichard signed DPR's Notice of
20 Final Decision to Register Venom Insecticide and Dinotefuran 20SG.

21 22. The true names and capacities of respondent and defendant DOES 1 through 10 are
22 not presently known to Petitioners. Petitioners may amend this petition and complaint to add the
23 true names and capacities of respondent and defendant Does at such time as they are discovered.

24 23. Real party in interest VALENT U.S.A. CORPORATION is a for-profit corporation
25 headquartered in Walnut Creek, California and the registrant for Venom Insecticide.

26 24. Real party in interest MITSUI CHEMICALS AGRO, INC. is a for-profit corporation
27 headquartered in Tokyo, Japan and the registrant for Dinotefuran 20SG.

1 32. The “sulfoxamine” subclass of neonicotinoids currently consists of one active
2 ingredient: sulfoxaflor. DPR has yet to approve any end-use pesticide products containing
3 sulfoxaflor. However, DPR has received applications from Dow AgroSciences to approve two
4 pesticide products (brand-named “Transform” and “Closer”) that contain sulfoxaflor as the active
5 ingredient, and DPR is in the process of evaluating those applications.

6 33. On February 27, 2009, DPR placed all pesticide products within the nitroguanidine
7 class of neonicotinoids into reevaluation based on data indicating that imidacloprid residue levels in
8 ornamental plants exceeded the agency’s levels of concern for honeybees. In September 2009, DPR
9 directed the registrants of the neonicotinoid products in question to submit certain scientific data
10 regarding potential impacts to honeybees.

11 34. After five full years, DPR’s reevaluation of neonicotinoids remains pending. DPR’s
12 most recent semi-annual report regarding pesticides currently under reevaluation indicates that – as
13 of December 31, 2013 – DPR had received and was in the process of analyzing some of the
14 requested data from registrants, but that the agency was still in the process of developing study
15 protocols for the gathering of other data. Thus, DPR has exceed, by more than three years, the
16 maximum time permitted under law, as it has provided registrants with far more than the allowable
17 two years to submit the data required by DPR for its neonicotinoid reevaluation.

18 35. There is now abundant scientific evidence that widespread use of neonicotinoids has
19 caused or contributed to the precipitous decline in honeybees and other insect pollinators. DPR is
20 well aware of the myriad peer-reviewed scientific studies and official reports linking neonicotinoids
21 to pollinator declines and honeybee colony collapse disorder. The administrative record before DPR
22 contains substantial evidence that existing use of neonicotinoids is having a significant adverse
23 impact on honeybees.

24 36. Despite DPR’s ongoing reevaluation of neonicotinoids, DPR has continued to
25 approve applications to register new neonicotinoid products or to register new uses for existing
26 neonicotinoid products. In 2012 and 2013, DPR issued at least 15 final decisions registering new
27 agricultural neonicotinoid products or approving significant new uses for existing agricultural
28 neonicotinoid products. In every case, the public report that accompanied DPR’s registration

1 decision claimed that the new product or use would not have a significant adverse effect on the
2 environment, employing essentially the same boilerplate language. None of DPR's public reports
3 identified or evaluated any feasible alternative to registration.

4 37. On January 10, 2014, DPR proposed to approve new uses for "Dinotefuran 20SG," a
5 pesticide manufactured by Mitsui Chemicals Agro that contains the neonicotinoid dinotefuran. The
6 following week, DPR proposed to approve new uses and revise the application rates for "Venom
7 Insecticide," another pesticide containing dinotefuran manufactured by Valent USA Corp. DPR re-
8 posted the public report for Dinotefuran 20SG on January 24, 2014, because the original report "did
9 not contain a complete description of the proposed amendments to the product's label."

10 38. The public reports that accompanied DPR's proposed decisions with respect to
11 Dinotefuran 20SG and Venom Insecticide contain precisely the same boilerplate that DPR has used
12 repeatedly in the past regarding environmental effects and alternatives, and they reach the same
13 conclusion:

14 DPR evaluated the new labels for their potential to create adverse environmental
15 effects to human health, water, air, and non-target species (checklist). After review of
16 the new labels for the above-identified registered products, DPR has determined that
17 use of each product in a manner consistent with its new label will have no direct or
indirect significant adverse environmental impact, and therefore no alternatives or
mitigation measures are proposed to avoid or reduce any significant effects on the
environment.

18 (See Notice of Proposed and Final Decisions and Public Rpts [Vol. 2014-3] at 5; Notice of Proposed
19 and Final Decisions and Public Rpts [Vol. 2014-4] at 2.)

20 39. Petitioners submitted extensive written comments in response to DPR's proposed
21 decisions with respect to Dinotefuran 20SG and Venom Insecticide by letter dated February 13,
22 2014. (See Exhibit C hereto.) Petitioners' comments cited substantial scientific evidence that use of
23 neonicotinoids has caused or contributed to the nationwide collapse of honeybees, and therefore
24 approving new uses for Venom Insecticide and Dinotefuran 20SG will have a significant
25 environmental effect. Petitioners urged DPR not to finalize its proposed decisions with respect to
26 Dinotefuran 20SG and Venom Insecticide until the agency completes its reevaluation of
27 neonicotinoids and complies with CEQA by disclosing environmental effects and alternatives.
28

1 connection with the proposals. The public reports employ the same boilerplate “analysis,” and they
2 conclude that the proposals “will have no direct or indirect significant adverse environmental
3 impact.” DPR’s public reports therefore purport to be the “functional equivalent” of a negative
4 declaration for purposes of CEQA. (See Cal. Code Reg., tit. 14, § 15252, subd. (b).)

5 47. Contrary to DPR’s conclusion, the administrative record shows that DPR’s proposed
6 decisions with respect to Venom Insecticide and Dinotefuran 20SG *will* have significant direct,
7 indirect, and cumulative adverse environmental effects, including but not limited to adverse effects
8 to honeybees and other pollinators. Accordingly, DPR’s finding of no significant impact and the
9 agency’s decision to prepare the functional equivalent of negative declarations was an abuse of
10 discretion. (See, e.g., *City of Arcadia v. State Water Res. Ctrl. Bd.* (2006) 135 Cal. App. 4th 1392,
11 1426 [holding that the agency’s reliance on the functional equivalent of a negative declaration was
12 inappropriate where substantial evidence supported a “fair argument” that the proposal “may” have a
13 significant impact]; *Friends of the Old Trees v. Department of Forestry & Fire Prot.* (1997) 52 Cal.
14 App. 4th 1383, 1397 [same].)

15 48. DPR’s conclusion that registering Venom Insecticide and Dinotefuran 20SG will not
16 have a significant environmental effect is unsupported by substantial evidence, and the agency’s
17 failure to prepare the functional equivalent of a full EIR constitutes an abuse of discretion.

18 SECOND CAUSE OF ACTION

19 (Violation of CEQA: Failure to Analyze Direct, Indirect, and Cumulative Impacts)

20 49. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
21 in the preceding paragraphs.

22 50. To implement CEQA, DPR must prepare a public report in conjunction with any
23 proposed pesticide registration decision. Among other things, the public report must provide “a
24 statement of any significant adverse environmental effect that can reasonably be expected to occur,
25 directly or indirectly, from implementing the proposal.” (Cal. Code Regs., tit. 3, § 6254.)

26 51. CEQA’s general policies apply to certified regulatory programs, including DPR’s
27 pesticide registration program. Courts have consistently held that the environmental documentation
28 in a certified regulatory program is subject to the same “substantive standards” as an EIR or negative

1 *impact on the environment*, the agency’s approval of the proposed project followed meaningful
2 consideration of alternatives.” (*Mountain Lion Found. v. Fish & Game Comm’n* (1997) 16 Cal. 4th
3 105, 134, emphasis added.)

4 55. Moreover, DPR’s own regulations direct the agency to give “special attention” to the
5 “availability of feasible alternatives” during the registration process. (Cal. Code Regs., tit. 3, 6158.)
6 DPR defines the term “feasible alternative” to mean “other chemical or non-chemical procedures
7 which can reasonably accomplish the same pest control function with comparable effectiveness and
8 reliability, taking into account economic, environmental, social, and technological factors and
9 timeliness of control.” (*Ibid.*, § 6000.)

10 56. Contrary to CEQA and DPR’s own regulations, the public reports that accompany
11 DPR’s decisions with respect to Venom Insecticide and Dinotefuran 20SG do not identify and
12 evaluate alternatives to the proposals. Instead, DPR claims that no alternatives analysis is necessary.
13 DPR’s failure to identify and evaluate feasible alternatives to registering Dinotefuran 20SG and
14 Venom Insecticide as proposed violates CEQA.

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of the Food and Agricultural Code: Illegal Reevaluation of Neonicotinoids)**

17 57. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
18 in the preceding paragraphs.

19 58. As discussed above, California law directs DPR to “develop an orderly program for
20 the continuous evaluation of all pesticides actually registered.” (Food & Agr. Code § 12824.)
21 Regulations promulgated by DPR to implement this statutory mandate provide that a pesticide will
22 be reevaluated whenever DPR “finds from the investigation that a significant adverse impact has
23 occurred or is likely to occur or that . . . an alternative is available.” (Cal. Code Regs., tit. 3, § 6220.)

24 59. Once DPR places a pesticide into reevaluation, the agency may “allow a reasonable
25 time” for the development and submission of data relevant to that reevaluation, “*not to exceed a*
26 *period of two years.*” (Cal. Code Regs., tit. 3, § 6222, subd. (a), emphasis added.)

27 60. DPR placed neonicotinoids into reevaluation in February 2009 – over five full years
28 ago. However, neonicotinoids remain under reevaluation today, and DPR is still in the process of

1 negotiating study protocols for much of the data it directed registrants to submit in 2009. DPR's
2 failure to conduct its reevaluation in a timely manner is contrary to law.

3 61. Moreover, while a pesticide is under reevaluation, notwithstanding the availability of
4 data, DPR must "act expeditiously to protect against risks to human health and the environment."
5 (Cal. Code Regs., tit. 3, § 6222.) Here, there is ample evidence that neonicotinoids have had and
6 will continue to have a substantial and adverse impact on honeybees and other insect pollinators.
7 DPR's failure to act expeditiously to address these environmental impacts pending reevaluation is
8 contrary to law.

9 **FIFTH CAUSE OF ACTION**

10 **(Illegal Pattern and Practice: Failure to Comply with CEQA)**

11 62. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
12 in the preceding paragraphs.

13 63. DPR has a ministerial duty under CEQA to comply with the provisions of CEQA
14 prior to registering pesticides for use in California.

15 64. Petitioners are informed and believe, and thereon allege, that DPR has misinterpreted
16 CEQA not to require that it perform or comply with each and every duty described herein. As a
17 result of its misinterpretation of CEQA, DPR has repeatedly ignored or violated the applicable
18 CEQA statutes and the regulations implementing CEQA. Among other things, DPR has
19 demonstrated an illegal pattern and practice of failing to identify, disclose, and evaluate (a) the
20 environmental impacts of pesticides proposed for registration, and (b) a range of feasible
21 alternatives, including the no-project alternative, as required by CEQA.

22 65. DPR's pattern and practice of failing to disclose and evaluate (a) direct, indirect, and
23 cumulative environmental impacts and (b) a range of feasible alternatives when registering
24 pesticides violates CEQA and regulations adopted by DPR to implement CEQA.

25 **SIXTH CAUSE OF ACTION**

26 **(Declaratory Relief)**

27 66. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
28 in the preceding paragraphs.

