

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CENTER FOR FOOD SAFETY
and CENTER FOR BIOLOGICAL
DIVERSITY,

Petitioners,

v.

ANDREW WHEELER, in his
official capacity as Administrator,
and UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY,

Respondents.

)
) **Case No.**

)
) **PETITION FOR REVIEW**

PETITION FOR REVIEW

Pursuant to Section 16(b) of the Federal Insecticide, Fungicide,
and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136n(b), and Rule 15(a) of the
Federal Rules of Appellate Procedure, Petitioners Center for Food
Safety and Center for Biological Diversity petition this Court to review
the orders of the United States Environmental Protection Agency
(“EPA”) granting the unconditional registration for new uses of the

active ingredient sulfoxaflor and amending the registration of existing uses to remove restrictions.

EPA's challenged order is memorialized in a document signed on July 12, 2019 entitled "Decision Memorandum Supporting the Registration Decision for New Uses of the Active Ingredient Sulfoxaflor on Alfalfa, Cacao, Citrus, Corn, Cotton, Cucurbits, Grains, Pineapple, Sorghum, Soybeans, Strawberries and Tree Plantations and Amendments to the Labels." Exhibit A. EPA registered the new uses for two end-use pesticide products (and removed certain restrictions for these two products), Transform® WG (EPA Registration Number 62719-625) and Closer® SC (EPA Registration Number 62719-623), and for Sulfoxaflor Technical (EPA Registration Number 62719-631). Exhibits B–D. To the extent EPA interprets the product labels as orders, this petition seeks review of those as well.

Petitioners respectfully petition this Court to set aside EPA's 2019 registration orders attached as Exhibits A–D in whole because: (1) EPA violated its duties and does not have substantial evidence under FIFRA in unconditionally registering the new uses of sulfoxaflor and amending the registration of existing uses; and (2) EPA violated its duties under

the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1533-44, by failing to consult with the United States Fish and Wildlife Service or the National Marine Fisheries Service to ensure that the registration decision for new uses of sulfoxaflor will not jeopardize any listed species or destroy or adversely modify any of their critical habitats, *see* 16 U.S.C. § 1536(a)(2); and (3) to grant other relief as may be appropriate.

Respectfully submitted this 20th day of August, 2019.

s/ Stephanie M. Parent
STEPHANIE M. PARENT
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97221
T: (971) 717-6404
sparent@biologicaldiversity.org

s/ George A. Kimbrell
George A. Kimbrell
Sylvia Wu
Amy van Saun
Center for Food Safety
2009 NE Alberta St., Suite 207
Portland, OR 97211
T: (971) 271-7372
gkimbrell@centerforfoodsafety.org
swu@centerforfoodsafety.org
avansaun@centerforfoodsafety.org

Attorneys for Petitioners