

FILED

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

PROTECTIVE ORDER IN PETITION NOS. 17-70810 AND 17-70817

1. The following Protective Order shall apply to these petitions, Nos. 17-70810 and 17-70817 (hereafter collectively referred to as “action”). It shall govern the production, use, and submission of Protected Information in the course of this action and preclude inappropriate use of such information for purposes other than this action. Protected Information shall be submitted to the court only in accordance with this Protective Order.
2. “Protected Information” shall include any material covered by the restrictions in 7 U.S.C § 136h(b) and (g).
3. Protected Information that is or becomes publicly available in a manner that does not violate this Protective Order or other relevant confidentiality requirements shall not constitute Protected Information, and to the extent a party obtains information outside the context of this action by means other than through a violation of this Protective Order or other confidentiality requirement, that party shall not be limited in its use of such information by this Protective Order.
4. **Labeling of Protected Information**

- a. With respect to Protected Information that may be exchanged among the parties, a party may designate any document or portion of a document, material, or other information (electronic or otherwise) in the course of this action as Protected Information.
- b. All Protected Information, including any correspondence, documents, DVDs, or other material exchanged containing Protected Information, shall be marked "SUBJECT TO PROTECTIVE ORDER."

5. Distribution of Protected Information

- a. Protected Information produced for purposes of this action shall be received and held in strict confidence and shall be used only for the purposes of this action, and shall not be used (except by the owner of such information) for any purpose outside of this action.
- b. Protected Information shall be disclosed only to the following:
 - i. the court;
 - ii. outside counsel for the parties to this action, including counsel's employees and support staff. Counsel have the obligation to reasonably limit and control the number of employees and support staff who have access to Protected Information and to ensure that each such person is aware of and complies with the terms and conditions of this Protective Order;

- iii. in-house litigation counsel for petitioners National Family Farm Coalition, Family Farm Defenders, Beyond Pesticides, Center for Biological Diversity, Center for Food Safety, Pesticide Action Network North America, and Natural Resources Defense Council;
 - iv. employees of petitioners National Family Farm Coalition, Family Farm Defenders, Beyond Pesticides, Center for Biological Diversity, Center for Food Safety, Pesticide Action Network North America, and Natural Resources Defense Council who are assisting in this action;
 - v. in-house litigation counsel for intervenor Dow Agrosiences LLC and its employees assisting in this action;
 - vi. employees of the United States, subject to the provisions and prohibitions of Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) section 10, 7 U.S.C. § 136h, and 18 U.S.C. § 1905, and the other provisions of this Protective order;
 - vii. expert consultants retained by any party to assist in this action, including their employees and support staff.
- c. Any individual listed in 5.b.ii-5.b.vii shall sign a certification (Attachment A hereto) indicating that he or she has received a copy of this Protective Order and agrees to be bound by its terms. For each

- company, firm, or organization, only one such certification is needed, provided that the individual certifying has the authorization to sign on behalf of all individuals who would be required to sign individually. Counsel of record for each party shall be responsible for obtaining all certifications required by this Protective Order in advance of any disclosure that may be permitted by this Protective Order, and shall be responsible for maintaining in safekeeping all original certifications.
- d. Nothing in this Protective Order shall limit the use by a party of its own Protected Information or prevent a party from disclosing its own Protected Information to any person, except that EPA remains bound by any relevant statutory or regulatory restrictions regarding disclosure of information.
- e. No person may further disseminate any Protected Information except as expressly authorized in this Protective Order.

6. The Administrative Record

- a. The EPA shall produce any portion of the administrative record the EPA believes in good faith is likely to contain Protected Information with a designation of "SUBJECT TO PROTECTIVE ORDER." All other portions of the administrative record shall be produced without that designation.

- b. Any party to this appeal may seek to de-designate as Protected Information any portion of the administrative record.
- c. A party seeking to de-designate as Protected Information any portion of the administrative record shall first meet and confer with counsel for the EPA as to whether agreement can be reached.
- d. If agreement is reached, any party may then file a letter with this court indicating that an agreement has been reached and stating which portion of the administrative record shall be de-designated.
- e. If no agreement is reached, a party may file with this court, under seal, a motion to de-designate the portion of the administrative record.
- f. Any party may file a response to the motion to de-designate within the time prescribed by Federal Rule of Appellate Procedure 27(a)(3). The moving party may file a reply within the time prescribed by Federal Rule of Appellate Procedure 27(a)(4).
- g. The portion of the administrative record at issue shall be considered Protected Information until the disposition of the motion to de-designate.
- h. At any time, the court may de-designate any portion of the administrative record without advanced notice to the parties.

7. Procedures to Govern the Filing of Protected Information

- a. The following procedures shall govern any filing with this court containing Protected Information.
- b. Briefs and Excerpts of Record:
 - i. Each party shall file a public version of any brief (including the opening, answering, and reply briefs) and excerpts of record (including original and supplemental) and shall redact any Protected Information and any material designated as “SUBJECT TO PROTECTIVE ORDER.”
 - ii. Each party also shall file simultaneously, under seal, an unredacted version of any brief or excerpts of record that has been publicly filed with redactions. The unredacted version shall be submitted using the “File Notice of Filing Document Under Seal and Submit Sealed Document” electronic filing event, and shall attach this order in lieu of the required notice of sealing.
 - iii. Within 30 days after the brief or excerpts of record is filed, the parties shall file with the court **one** joint motion to seal using the “File Motion to Maintain Under Seal” electronic filing event.
 1. The motion shall request the least restrictive scope of redactions and shall be limited in scope to only the specific documents or portion of documents that merit redactions.

2. The motion shall explain the specific reasons redactions are necessary and describe the potential for irreparable injury in the absence of such relief.
 3. If the parties disagree as to whether any material should be redacted, the parties shall present their respective positions within the motion.
- iv. The motion and the unredacted version of the brief and excerpts of record will be provisionally sealed pending a disposition on the motion.
- c. For filings containing Protected Information other than the Briefs and Excerpts of Record:
- i. Each party shall file a public version of any filing and shall redact any Protected Information and material designated as “SUBJECT TO PROTECTIVE ORDER.”
 - ii. Each party also shall file simultaneously, under seal, an unredacted version of the filing that has been publicly filed with redactions. The unredacted version shall be submitted using the “File Notice of Filing Document Under Seal and Submit Sealed Document” electronic filing event, and shall attach this order in lieu of the required notice of sealing.

- iii. Within 30 days after the filing, the parties shall file with the court **one** joint motion to seal using the “File Motion to Maintain Under Seal” electronic filing event.
1. The motion shall request the least restrictive scope of redactions and shall be limited in scope to only the specific documents or portion of documents that merit redactions.
 2. The motion shall explain the specific reasons redactions are necessary and describe the potential for irreparable injury in the absence of such relief.
 3. If the parties disagree as to whether any material should be redacted, the parties shall present their respective positions within the motion.
- iv. A party may move to have an entire filing or an entire exhibit filed under seal using the “File Motion to File Document Under Seal and Submit Sealed Document” electronic filing event. Where a party moves to file under seal an entire filing, the moving party does not need to file a public version of the filing as indicated in 7.c.i above. Where a party moves to file under seal an entire exhibit, the party shall comply with the requirements of 7.c.i above and shall include a placeholder page for the exhibit sought to be

sealed with the text “EXHIBIT PROVISIONALLY FILED
UNDER SEAL.”

- v. The motion and the unredacted version of the filing will be provisionally sealed pending a disposition on the motion.

8. Mandate

- a. Confidentiality under this Protective Order is to be maintained both during and after the final disposition of this action.
- b. Within 90 days after the mandate in this action issues, the parties shall destroy or return to counsel for the producing party all Protected Information, including all copies thereof, provided that counsel of record for each party may maintain a copy of any briefs, excerpts of record, or other material filed with or presented to the court in this action.
- c. Within 90 days after the mandate in this action has issued, the non-public administrative record that the EPA produces to the parties shall be returned to the EPA by counsel of record or in-house counsel for the receiving parties.
- d. Absent extraordinary circumstances, a motion to de-designate or to seal will not be entertained if the motion is filed after the mandate issues in this action.

9. Oral Argument

- a. Except as otherwise ordered by the court, the court will not close oral argument to the public in any type of case, including this action, even when the case itself or the briefs or excerpts of record have been filed under seal. A party seeking a closed hearing shall move for such extraordinary relief at least 14 days prior to the scheduled argument date and explain with specificity why such relief is required and whether any less extraordinary alternative is available.

ATTACHMENT A

Certification

I, _____, hereby certify under penalty of perjury that I have received a copy of and read the Protective Order in Nat'l Family Farm Coal. v. EPA, No. 17-70810 (9th Cir.) and Nat'l Res. Def. Council v. Pruitt, No. 17-70817 (9th Cir.), and I agree to abide by the terms of the Protective Order.

Name.

Affiliation or Employer.