

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE)	
COUNCIL, INC.,)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY and GINA MCCARTHY,)	
EPA Administrator, in her official capacity,)	
)	
Defendants.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The monarch butterfly, *Danaus plexippus*, is an iconic species famed for its annual migration across North America. Every year, monarch butterflies migrate from Mexico to Canada and back, traversing much of the continental United States.

2. Glyphosate, a chemical found in myriad pesticides approved by the U.S. Environmental Protection Agency (EPA), has decimated milkweed, the sole food source for monarch caterpillars, along this migration route. In doing so, glyphosate has placed this distinctive butterfly and the annual migration in peril.

3. Since the mid-1990s, the population of monarchs that completes the North American migration and spends winter in Mexico has declined by more than ninety percent. In 1997, approximately one billion monarchs journeyed from summer habitat in the United States and Canada to wintering grounds in Mexico. This winter, only about 56.5 million butterflies—the second lowest number ever measured—reached their winter refuge. The remaining

population is so small that a single severe weather event could eradicate it. Scientists have warned that the monarch migration is at risk of vanishing.

4. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires EPA to ensure that the pesticides it registers will not cause unreasonable adverse effects on the environment, including wildlife. However, the agency has never considered glyphosate's impacts on monarchs.

5. One year ago, plaintiff Natural Resources Defense Council (NRDC) petitioned EPA to review the agency's registrations for pesticides containing glyphosate. *See* 7 U.S.C. § 136a(c)(8) (providing for interim administrative review); 40 C.F.R. §§ 154.7, 154.10. In its petition, NRDC alerted EPA to the substantial body of scientific evidence demonstrating glyphosate's devastating effects on monarchs. In light of these data, NRDC requested that the agency promptly evaluate glyphosate's effects on monarchs, and impose any necessary measures to mitigate the harm to the imperiled species.

6. EPA has not responded to NRDC's petition.

7. In light of the significant ongoing harm that its registration decisions have inflicted on the vulnerable monarch population, EPA's delay in assessing glyphosate's impacts on the species is unreasonable and violates FIFRA and the Administrative Procedure Act (APA), 5 U.S.C. §§ 706(1), 555(b). NRDC requests that this Court compel the agency to respond to NRDC's petition for review within thirty days, and to complete review within six months.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

9. Venue is proper in this judicial district because NRDC resides and maintains its principal place of business in this district. 28 U.S.C. § 1391(e)(1)(C).

10. This Court may award all requested injunctive relief pursuant to the APA, 5 U.S.C. § 706(1). The Court may award declaratory and any further necessary and proper relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

PARTIES

11. Plaintiff NRDC is a national, not-for-profit environmental and public health membership organization with approximately 300,000 members. NRDC engages in research, advocacy, and litigation to improve the regulation of pesticides and minimize their harmful effects on human health and the environment, including on wildlife.

12. NRDC brings this suit on behalf of its members. NRDC's members derive aesthetic, recreational, and spiritual enrichment from observing monarch butterflies on the butterflies' annual migration through the United States. In recent years, NRDC's members have observed a steep drop in the number of monarchs they encounter during the migration season—in at least one case, from hundreds per year to less than a handful. This decline has distressed NRDC's members, diminishing their enjoyment of treasured outdoor spaces and even their own yards.

13. A major cause of the North American monarch population's plummeting numbers is the application of glyphosate to crop areas, and the resulting destruction of migrating monarchs' milkweed habitat.

14. If EPA were to promptly review glyphosate's effects on monarchs and modify the registrations for glyphosate-containing pesticides to minimize monarch habitat loss, this would contribute to recovery of the butterfly population. An order compelling EPA to act promptly on NRDC's petition would accordingly help to redress NRDC members' injuries.

15. Defendants EPA and Gina McCarthy, in her official capacity as Administrator of EPA (together, EPA), are charged under FIFRA with registering pesticides and ensuring that pesticides do not cause unreasonable adverse effects on the environment.

STATUTORY AND REGULATORY FRAMEWORK

16. FIFRA prohibits the distribution or sale of any pesticide unless EPA has approved, or “registered,” that pesticide. 7 U.S.C. § 136a(a).

17. FIFRA allows EPA to register a pesticide only if it determines both that the pesticide “will perform its intended function without unreasonable adverse effects on the environment,” *id.* § 136a(c)(5)(C), and that “when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment,” *id.* § 136a(c)(5)(D).

18. Before it can make these determinations, EPA’s regulations require it to “review[] all relevant data in the possession of the Agency,” 40 C.F.R. § 152.112(b), and “determine[] that no additional data are necessary to make the determinations,” *id.* § 152.112(c).

19. FIFRA defines “[u]nreasonable adverse effects on the environment” to include “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.” 7 U.S.C. § 136(bb).

20. EPA’s duty to ensure that the pesticides it registers do not cause unreasonable environmental harm does not end after the initial registration decision. Instead, the agency must “periodically review[]” registrations it has made. *Id.* § 136a(g)(1)(A)(i). FIFRA requires EPA to complete its initial registration review for pesticides containing glyphosate no later than October 1, 2022. *See* 7 U.S.C. § 136a(g)(1)(A)(iii)(I). EPA must complete subsequent reviews of these pesticides at least every 15 years thereafter. *Id.* § 136a(g)(1)(A)(iv).

21. In addition to requiring EPA to undertake periodic registration review, FIFRA authorizes the agency to conduct interim administrative review, also called Special Review, of pesticides. *Id.* § 136a(c)(8); 40 C.F.R. § 154.7(a). EPA may undertake Special Review whenever the agency determines, based on “a validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or to the environment,” 7 U.S.C. § 136a(c)(8); *see also* 40 C.F.R. § 154.7(a), that the pesticide “[m]ay . . . pose a risk to humans or to the environment which is of sufficient magnitude to merit a determination whether the use of the pesticide product offers offsetting social, economic, and environmental benefits that justify initial or continued registration,” 40 C.F.R. § 154.7(a)(6). “Other significant evidence” includes “factually significant information that relates to the uses of the pesticide and its adverse risk to man or to the environment.” *Id.* § 154.3.

22. The Special Review process “is intended to ensure that the Agency assesses risks that may be posed by pesticides, and the benefits of use of those pesticides, in an open and responsive manner.” *Id.* § 154.1. EPA’s regulations give “any interested person” the right to petition the EPA for Special Review of a pesticide. *Id.* § 154.10.

23. If EPA determines the criteria for initiating Special Review are satisfied, it must notify the affected registrants and applicants. *Id.* § 154.21(a). If EPA subsequently declines to initiate Special Review, it must publish a proposed decision that includes its rationale in the Federal Register and provide a public comment period. *Id.* § 154.23. EPA must also publish its final decision on whether to conduct Special Review, and the rationale for its decision, in the Federal Register. *Id.* § 154.25(a)-(b).

24. The purpose of the Special Review process is to help EPA “determine whether to initiate procedures to cancel . . . or reclassify registration of a pesticide product because uses of

that product may cause unreasonable adverse effects on the environment.” *Id.* § 154.1(a). After conducting Special Review, and “[a]s necessary” to prevent unreasonable adverse effects on the environment, “the Administrator shall also prepare Notices of Intent to Cancel, . . . Notices of Intent to Change Classification,” or take other action on a pesticide’s registration. *Id.* § 154.33(a).

FACTS

The Rise of Glyphosate-Containing Pesticides

25. Glyphosate is a pesticide used in agricultural and other settings. EPA first registered glyphosate in 1974 and re-registered it in 1993.

26. Glyphosate is non-selective: It damages and kills both crops and weeds. As a result, glyphosate-containing pesticides came into wide use only in the late 1990s, after agricultural corporations genetically engineered new crop strains that could withstand glyphosate—and after EPA’s most recent review of glyphosate’s registration.

27. Glyphosate use has increased dramatically since the last time EPA considered glyphosate’s effects. For example, between 1989 and 1991, 18.7 million pounds of glyphosate were used in the United States annually. By the late 2000s, annual use was nearly ten times higher: 182 million pounds of glyphosate were applied between 2008 and 2009.

28. As of 2011, ninety percent or more of the United States’ corn and soy fields were treated with glyphosate.

The Decline of Monarch Butterflies

29. The monarch butterfly is a striking, widely recognized species, known for the distinctive orange and black pattern on its wings.

30. Every spring, monarch butterflies that winter in the forests of central Mexico embark on a migration across the United States to as far as southern Canada, and back again. It takes multiple generations of monarchs to complete each migration cycle.

31. This migrating population's ability to reproduce hinges on the availability of milkweed in the United States: Milkweed is the sole food source for monarch caterpillars.

32. When milkweed is scarce, monarch breeding suffers. Female monarchs deplete energy and body fat searching for milkweed on which to lay their eggs. This causes them to lay fewer eggs, or even to die before depositing any eggs. The monarch caterpillars that do hatch are less likely to survive adulthood, because of competition for a limited food supply.

33. Since glyphosate use began to skyrocket in the 1990s, there has been a drastic decline in milkweed across the United States. One study estimates that between 1999 and 2012, milkweed cover in the agricultural Midwest decreased by sixty-four percent.

34. Over this same period, the population of monarchs that completes the annual North American migration, as measured on its Mexican wintering grounds, has dropped from approximately one billion in 1997 to a little over fifty-six million this winter.

35. This population is now so small that it is susceptible to total eradication from stressors, such as severe weather, from which a larger population could recover. In 2002, a single snowstorm on the Mexican wintering grounds killed more monarchs than currently comprise the entire population. The continued loss of butterflies will make this already imperiled population increasingly vulnerable.

36. There is broad consensus among monarch butterfly scientists that widespread glyphosate use is among the most significant causes, if not the single most significant cause, of the monarchs' decline.

NRDC's Petition

37. EPA has never considered glyphosate's impacts on monarchs.

38. On February 24, 2014, NRDC petitioned EPA to request that the agency undertake Special Review of glyphosate in light of its demonstrated impact on monarchs, and restrict glyphosate's uses or impose other mitigation measures, as necessary to prevent unreasonable adverse impacts to the butterflies.

39. NRDC's petition presented current, credible scientific evidence linking the glyphosate uses EPA has sanctioned to milkweed destruction and monarch population decline.

40. The petition emphasized the need for haste to prevent further and irreparable damage to the already imperiled monarch population: It asked EPA to initiate Special Review within thirty days and complete review within six months.

41. A year has passed since NRDC filed its petition, and EPA still has not responded.

42. In the year since NRDC filed its petition, EPA has approved Enlist Duo, yet another glyphosate-containing pesticide, again without considering adverse impacts on monarchs.

43. Given the critical condition of the monarch population, it is essential to successful conservation of the species that EPA promptly review its registrations for glyphosate-containing pesticides.

CLAIM FOR RELIEF

44. NRDC incorporates by reference all preceding paragraphs.

45. In light of the devastating harm to monarch butterflies caused by EPA's registration of glyphosate-containing pesticides, the agency has delayed unreasonably in responding to NRDC's petition for Special Review.

46. EPA's failure to respond to NRDC's petition constitutes an agency action unlawfully withheld or unreasonably delayed in violation of the APA, 5 U.S.C. § 706(1), and FIFRA.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court enter a judgment against EPA:

A. Declaring that EPA's failure in responding to NRDC's petition is unreasonable and violates the APA and FIFRA;

B. Ordering EPA to respond to NRDC's petition for Special Review within thirty days, and, if the agency chooses to initiate Special Review, to complete the review within six months;

C. Awarding NRDC its costs and reasonable attorneys' fees; and

D. Granting NRDC such additional and further relief as the Court may deem just and proper.

Dated: February 27, 2015
New York, New York

Respectfully submitted,



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