

EPA's Cyantraniliprole Registration Survives ESA Challenge in D.C. District Court

June 2015

On May 15th, the EPA, E.I. du Pont de Nemours and Company, Syngenta Crop Protection LLC, and CropLife America won a significant victory in the D.C. District Court against the Center for Biological Diversity (CBD) and Defenders of Wildlife. At issue was the proper court for the lawsuit. Plaintiffs brought the case in district court to challenge EPA's registration of the chemical compound cyantraniliprole as an active ingredient in pesticides, but EPA argued that Congress has granted exclusive jurisdiction to the courts of appeals to hear such claims under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136-136y.

In her opinion for the D.C. District Court, Senior District Judge Gladys Kessler ruled that FIFRA provisions required the case to be brought in the courts of appeals rather than the district court, and that the Endangered Species Act did not create a separate right to sue in district court. To support this ruling, Judge Kessler cited the opinion of the Northern California District Court in the so-called "Mega" case, *CBD v. EPA*, No. 11-cv-293, 2014 WL 3974778, as a "well-reasoned and thorough" discussion and resolution of the matter. The Mega case is now being appealed before the Ninth Circuit, *CBD v. EPA*, No. 14-16977 (9th Cir.). The result in the Ninth Circuit potentially could apply to a wider range of EPA pesticide registrations than the two district court cases.

DuPont markets cyantraniliprole in products such as the Benevia® insecticide. The active ingredient is in the form of an oil dispersion, to be mixed with water and applied as a foliar spray. DuPont reports that its product is particularly active on both sucking and chewing (Lepidopteran) insect pests, and is specially formulated for maximum

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performance in onions, potatoes, and tomatoes. The EPA label for the product cautions users to spray the product only after daily honeybee flights and to use the product to avoid potential exposure of honeybees, such as by avoiding spray drift into flowering off-crop habitats.