

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

JUL 18 2022

FOR THE NINTH CIRCUIT

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

CENTER FOR BIOLOGICAL DIVERSITY;
CENTER FOR FOOD SAFETY,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Respondent,

VALENT U.S.A. LLC,

Intervenor.

No. 20-73146

EPA No.
EPA-HQ-OPP-2018-0038-0040

MEMORANDUM*

On Petition for Review of an Order of the
Environmental Protection Agency

Argued and Submitted July 7, 2022
Portland, Oregon

Before: R. NELSON and LEE, Circuit Judges, and RAKOFF,** District Judge.

Petitioners Center for Biological Diversity (“CBD”) and Center for Food

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

Safety challenge an order by the Environmental Protection Agency (“EPA”) registering a new fungicide called inpyrfluxam.¹ We have jurisdiction under 7 U.S.C. § 136n(b) and grant the petition in part, and remand to the EPA with instructions.

Petitioners challenge the registration on various grounds, including EPA’s failure to make an effects determination under § 7(a)(2) of the Endangered Species Act and to consult with federal wildlife agencies. At oral argument, Petitioners withdrew their request that the court vacate the registration and asked us to impose on EPA a deadline to complete its effects determination and initiate consultation as necessary. Intervenor Valent does not object to remand without vacatur or with a deadline. EPA admits error and asks for a voluntary remand, without vacatur or a deadline. EPA has represented to the court that it is on track to have a draft effects determination by fall 2022 and a final effects determination by spring 2023.

We grant EPA’s request for a voluntary remand. We remand to EPA with a deadline to complete its final effects determination for inpyrfluxam and inpyrfluxam products and to initiate any required consultation with the wildlife agencies by June 22, 2023.

The parties will bear their own costs.

¹ CBD has associational standing, sufficient for the appeal to proceed. *See Nat’l Fam. Farm Coal. v. EPA*, 966 F.3d 893, 908 (9th Cir. 2020).

GRANTED IN PART AND REMANDED WITH INSTRUCTIONS.