

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 21-1079****September Term, 2020****EPA-Reg. No. 87895-2****Filed On: June 7, 2021**

Farmworker Association of Florida, et al.,

Petitioners

v.

Environmental Protection Agency,

Respondent

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AgLogic Chemical, LLC,  
Intervenor**BEFORE:** Millett, Wilkins, and Katsas, Circuit Judges**ORDER**

Upon consideration of the motion for summary vacatur or to stay pending expedited review, the responses thereto, and the replies; the motion for remand without vacatur, the response thereto, the reply, the motion for leave to file a surreply, and the lodged surreply; the Rule 28(j) letters, the responses thereto, the notice dated May 17, 2021, and the response thereto; the motion to extend time, the response thereto, and the reply; and the motions to participate as amicus curiae, it is

**ORDERED** that the motion for leave to file a surreply be granted. The Clerk is directed to file the lodged surreply. It is

**FURTHER ORDERED** that the motion for summary vacatur be granted and the motion for remand without vacatur be denied. The Environmental Protection Agency acknowledges it did not make an Endangered Species Act (ESA) effects determination prior to approving aldicarb for use on oranges and grapefruit in Florida and has, therefore, violated section 7(a)(2) of the ESA. 16 U.S.C. § 1536(a)(2); see *Center for Biological Diversity v. EPA*, 861 F.3d 174, 188 (D.C. Cir. 2017). EPA has been explicit that it will not provide any reconsideration on remand before 2024 at the earliest – long after the registration at issue has expired. So EPA has admitted that it will not provide the timely reconsideration that is the central rationale for remand without vacatur. Cf. *Limnia, Inc. v.*

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Dept. of Energy, 857 F.3d 379, 386 (D.C. Cir. 2017) (“In general, a voluntary remand request made in response to a party’s APA challenge may be granted only when the agency intends to take further action with respect to the original agency decision on review.”). Vacatur is further warranted in light of the seriousness of the admitted error and the error’s direct impact on the merits of the EPA’s registration decision given the agency’s finding as to the acute toxicity of aldicarb. See *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm’n*, 988 F.2d 146, 150-51 (D.C. Cir. 1993). In addition, vacatur would not result in material disruption because aldicarb has not been authorized for use on oranges and grapefruit in Florida for nearly a decade, and because at present the Florida Department of Agriculture and Consumer Services has denied intervenor’s application for state registration for the use of aldicarb on oranges and grapefruit. See FDACS Notice of Denial (Apr. 21, 2021), petition for administrative hearing filed May 11, 2021.

**FURTHER ORDERED** that the motion to extend time to file the certified index be dismissed as moot.

**FURTHER ORDERED** that the motions for leave to participate as amicus curiae be denied. Neither the Federal Rules of Appellate Procedure nor the Circuit Rules provide for the participation of amici at the motions stage of a case. See Fed. R. App. P. 29.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**

**FOR THE COURT:**

Mark J. Langer, Clerk

BY: /s/  
Manuel J. Castro  
Deputy Clerk