FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE PESTICIDE ACTION NETWORK NORTH AMERICA; NATURAL RESOURCES DEFENSE COUNCIL, INC.,	No. 14-72794
PESTICIDE ACTION NETWORK NORTH AMERICA; NATURAL RESOURCES DEFENSE COUNCIL, INC., *Petitioners*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	ORDER

Filed August 12, 2016

Before: Diarmuid F. O'Scannlain, A. Wallace Tashima, and M. Margaret McKeown, Circuit Judges.

SUMMARY*

Environmental Law

The panel denied the United States Environmental Protection Agency's request for an additional six months to take final action on its proposed revocation rule and its final response to Pesticide Action Network North American and Natural Resources Defense Counsel's 2007 administrative petition.

The panel held that the requested six-month delay was not justified in light of the EPA's history in the matter, as well of the court's previous extensions. The panel directed the EPA to take final action by March 31, 2017. The panel retained jurisdiction over any further related proceedings.

COUNSEL

Patti A. Goldman and Kristen Boyles, Earthjustice, Seattle, Washington, for Petitioners.

Erica M. Zilioli, Environmental Defense Section; John C. Cruden, Assisant Attorney General, Environment & Natural Resources Division; United States Department of Justice, Washington, D.C.; Mark Dyner, Office of General Counsel; United States Environmental Protection Agency, Washington, D.C.; for Respondents.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Stanley H. Abramson, Donald C. McLean, Kathleen R. Heilman, and Sylvia G. Costelloe, Arent Fox LLP, Washington, D.C., for Amici Curiae CropLife America, Agricultural Retailers Association, Almond Alliance of California, American Soybean Association, Beet Sugar Development Foundation, California Citrus Mutual, National Agricultural Aviation Association, National Corn Growers Association, National Cotton Council, National Potato Council, National Sorghum Producers, Oregonians for Food & Shelter, Schertz Aerial Service Inc., U.S. Apple Association, Washington Friends of Farms & Forests, and Western Growers Association.

ORDER

Citing "extraordinary circumstances," the United States Environmental Protection Agency ("EPA") requests an additional six month extension to take final action on its proposed revocation rule and its final response to Pesticide Action Network North America and Natural Resources Defense Council's (collectively, "PANNA") 2007 administrative petition. CropLife and the other amici would double that extension. PANNA asks us to deny the EPA's request in light of the nearly decade-long delay in issuance of the rule and the documented health risks.

The "extraordinary circumstances" claimed this time—that EPA issued its proposed rule before completing two studies that may bear on the Agency's final rule—is another variation on a theme "of partial reports, missed deadlines, and vague promises of future action" that has been repeated for the past nine years. *In re Pesticide Action Network*, 798 F.3d 809, 811 (9th Cir. 2015). EPA's continued delay is all the

more significant since there are "considerable human health interests prejudiced by it." *Id.* at 814.

EPA's nine-year delay in taking action was "objectively extreme" when we received PANNA's petition for mandamus, and nothing has changed that would justify EPA's continued failure to respond to the pressing health concerns presented by chlorpyrifos. While we acknowledge that "evidence may be imperfect . . . the feasibility inquiry is formidable, and . . . premature rulemaking is undesirable", *Public Citizen Health Research Grp. v. Chao*, 314 F.3d 143, 154–55 (3d Cir. 2002), at this stage, a claim of premature rulemaking has come and gone. The requested six-month delay is not justified in light of EPA's history in this matter as well as the court's previous extensions.

EPA's request for an additional six months to take final action is **DENIED**. EPA is directed to take final action by March 31, 2017. This is the final extension, and the court will not grant any further extensions.

The panel shall retain jurisdiction over any further proceedings related to this petition.