

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<hr/>		)
RURAL & MIGRANT MINISTRY, ALIANZA	)	)
NACIONAL DE CAMPESINAS, EL COMITE	)	)
DE APOYO A LOS TRABAJADORES	)	)
AGRÍCOLAS, PINEROS Y CAMPESINOS	)	)
UNIDOS DEL NOROESTE, WORKER	)	)
JUSTICE CENTER OF NEW YORK,	)	)
	)	Civil Action No.
Plaintiffs,	)	)
	)	)
v.	)	<b>COMPLAINT FOR</b>
	)	<b>DECLARATORY AND</b>
UNITED STATES ENVIRONMENTAL	)	<b>INJUNCTIVE RELIEF</b>
PROTECTION AGENCY and SCOTT PRUITT,	)	)
in his official capacity as Administrator of the	)	)
United States Environmental Protection Agency,	)	)
	)	)
Defendants.	)	)
<hr/>		)

**INTRODUCTION**

1. This lawsuit challenges the failure of the Environmental Protection Agency (“EPA”) to issue a notice of availability for available documents that would trigger heightened regulatory protection for farmworkers and agricultural pesticide handlers. The protection at issue is mandatory updated training to reduce pesticide poisoning and injury pursuant to the Agricultural Worker Protection Standard (“WPS”).

2. EPA promulgated and implements the WPS, which is a set of regulations intended to reduce the risk of illness or injury to farmworkers, pesticide handlers, and their families as a result of occupational exposures to pesticides used on farms, nurseries, greenhouses, and forests. See 40 C.F.R. pt. 170.

3. Farmworkers and agricultural pesticide handlers in the United States face significant burdens and social and economic disadvantages. A majority are foreign-born, speak Spanish as a native language, have limited English skills, have received minimal formal education, are migrants who travel to find employment, and lack access to healthcare. As EPA has recognized, “[t]he low literacy rates, range of non-English languages spoken by workers and handlers, economic situation, geographic isolation, difficulty accessing health care, and immigration status of workers and handlers pose challenges for communicating risk management information and ensuring that these groups are adequately protected.” Pesticides; Agricultural Worker Protection Standard Revisions, 79 Fed. Reg. 15,444, 15,457 (proposed Mar. 19, 2014) (to be codified at 40 C.F.R. pt. 170); *see also* Pesticides; Agricultural Worker Protection Standard Revisions, 80 Fed. Reg. 67,496, 67,502 (Nov. 2, 2015) (codified at 40 C.F.R. pt. 170).

4. In 2015 revisions to the WPS, EPA acknowledged the importance of training in protecting these workers and handlers, as well as their families, from avoidable pesticide exposure as a result of their employment. The WPS, as revised in 2015, therefore specified expanded and improved content for pesticide training. EPA committed to develop and make the updated training materials available as soon as possible.

5. The WPS specifies that the updated content will become a mandatory part of training for farmworkers and pesticide handlers 180 days after EPA’s notice of availability in the Federal Register of the updated training materials. 40 C.F.R. §§ 170.401(c)(3), 170.501(c)(3).

6. EPA acknowledges that the updated training materials are now available, but it is refusing to issue a notice in the Federal Register announcing their availability precisely because doing so would make the training mandatory. EPA’s unlawful failure to issue the notice, despite its acknowledgement that these materials are available, prevents the new training content from

becoming a mandatory part of training, to the detriment of Plaintiffs, their members, and other farmworkers and pesticide handlers across the country.

7. Plaintiffs seek a declaratory judgment and an order enjoining EPA to publish immediately a notice of availability of the updated training material.

### **JURISDICTION AND VENUE**

8. This action arises under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States) and 5 U.S.C. § 702 (judicial review of agency actions).

9. This Court has the authority to grant the requested declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202, and 5 U.S.C. §§ 702 and 706.

10. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(e), because this civil action is brought against an agency of the United States, Plaintiff Rural & Migrant Ministry has its principal place of business in Poughkeepsie, New York, and no real property is involved in the action.

### **PARTIES**

11. Plaintiff Rural & Migrant Ministry (“RMM”) is a statewide, non-profit organization founded in 1981 that advocates for, and works closely with, rural and migrant communities throughout New York. RMM works with rural leaders towards the creation of a just, rural New York State through nurturing leadership; standing with the disenfranchised, especially farmworkers and rural workers; and changing unjust systems and structures. RMM implements its mission through three programs: an accompaniment program, in which RMM accompanies and supports rural workers—most often, farmworkers—who seek to improve working and living conditions; an education program to strengthen rural leaders; and a youth empowerment program committed to empowering rural children to create opportunities for

themselves while at the same time learning how to change their world. RMM's mission to advance a just and rural New York State in which farmworkers operate in safe working and living conditions cannot be achieved or fulfilled so long as the WPS, including its training requirements, are not fully implemented. As a result, RMM is engaging in education programs for farmworkers and pesticide handlers to cover topics inadequately addressed or not addressed at all under the outdated training currently required under the WPS as a result of EPA's failure to publish a notice of availability.

12. Plaintiff Alianza Nacional de Campesinas ("Alianza"), founded in 2011, is a national non-profit farmworker organization committed to securing social, environmental, and economic justice; violence prevention; equality; and healthier workplaces, homes, and communities for farmworker women and their families. Alianza's organizational members include Asociación Campesina de Florida, Campesinos Sin Fronteras, Workers' Center of Central New York, Rural Coalition, Centro de Los Derechos del Migrante, Inc., and Labor Council for Latin American Advancement. Because healthy workplaces and homes cannot be achieved without, at least, full implementation of the WPS, including its training requirements, Alianza is actively expending its resources on providing training, information, and materials to its membership organizations and their respective members concerning how to avoid pesticide exposure, both in the course of agricultural work and from take-home pesticide residues.

13. Plaintiff El Comité de Apoyo a Los Trabajadores Agrícolas (The Farmworkers Support Committee or "CATA") is a non-profit migrant farmworker organization founded in southern New Jersey in 1979 to empower and educate farmworkers. CATA, which is comprised of farmworker members who are actively engaged in the struggle for better working and living conditions, is dedicated to empowering and educating farmworkers through leadership development and capacity building. CATA operates in Southern New Jersey, parts of

Pennsylvania, and the Delmarva Peninsula in Maryland. Its members include farmworkers and pesticide handlers who are not receiving training on the updated content in the 2015 revision to the WPS, and as a result are at greater risk of being harmed by occupational pesticide exposure and at greater risk of exposing their families to take-home pesticide residue.

14. Plaintiff Pineros y Campesinos Unidos del Noroeste (Northwest Treeplanters and Farmworkers United or “PCUN”), founded in 1985, is Oregon’s only farmworker union and the largest Latino organization in the state. Based in Woodburn, Oregon—the center of Oregon’s agricultural industry—PCUN’s mission is to empower farmworkers to recognize and take action against systematic exploitation and all of its effects. Since its founding, PCUN has registered over 6,000 members, 98 percent of whom are immigrants from Mexico and Central America. Approximately one-third of PCUN’s members come from indigenous communities in Mexico and speak indigenous languages, but little to no English or Spanish. Some PCUN members mix and apply pesticides to crops, often without receiving adequate training. Many more risk exposure to pesticides while pruning, thinning, and harvesting crops, such as apples, pears, strawberries, cherries, blueberries, squash, broccoli, and cauliflower, and may not be receiving the expanded training set forth under the updated WPS that would enable them to protect themselves and their families from pesticide exposure.

15. Plaintiff Worker Justice Center of New York (“Worker Justice Center”) is a non-profit statewide advocacy organization that pursues justice for those denied human rights, with a focus on agricultural and other low-wage workers. Worker Justice Center is the merger of Farmworker Legal Service of New York and the Workers’ Rights Law Center. Its programs include a Pesticide Education Project that provides outreach and education on pesticide issues to farmworkers and to agencies that work with farmworkers. The Education Project focuses on issues of occupational chemical exposure and the standards that protect workers in the

workplace. Worker Justice Center also operates a Workplace Health and Safety Project that educates workers and employers in industries with high injury and fatality rates; low literacy; young, limited English proficiency and otherwise vulnerable workers; and small business employers. It funds long-term programs that build safety and health competency within organizations. The goals of the project include assessing the training needs of farmworkers; providing comprehensive training to farmworkers; and creating the training curriculum and delivery methods that will be used as a model to further develop and expand within the region. Worker Justice Center is expending its resources to educate farmworkers and pesticide handlers on material and content that are part of the updated training set forth in the WPS but not yet required as a result of EPA's failure to publish a notice of availability.

16. In short, Plaintiffs are a) organizations that are actively educating farmworkers on pesticide exposure in the absence of any mandatory federal requirements to provide effective training, or b) organizations with members who are farmworkers and pesticides handlers entitled to the protections that EPA determined to be necessary to avoid unreasonable adverse effects to workers from pesticides when it amended the WPS in 2015. Implementation of the WPS's updated training requirements will ensure that those Plaintiffs who are expending resources on education and training on pesticide exposure to compensate for the lack of mandatory updated training can direct these resources to the myriad other immediate issues and concerns relevant to farmworker populations. Implementation of the updated training requirements also will ensure that Plaintiffs' members who are farmworkers and pesticide handlers will be informed and educated about their rights to a safe workplace, including the WPS's anti-retaliation provisions; how best to minimize their own and their families' exposure to agricultural pesticides; and how to mitigate harm from any pesticide exposure.

17. In the absence of a court order requiring EPA to publish a notice of availability of the updated training materials incorporating the content set forth in the 2015 revisions to the WPS, agricultural employers will continue to have no obligation to provide the expanded training content specified in the WPS. As a result, Plaintiffs' members and the communities they work tirelessly to support can and will continue to be trained by their employers using decades-old training content that is well-established as inadequate to protect farmworkers, handlers, and their families from avoidable incidents of pesticide exposure. EPA's unlawful failure to publish the notice of availability harms the environmental and health interests of Plaintiffs and their members because it denies them the benefits and protections that the WPS training requirements would bring. Plaintiffs' injuries will be redressed by the requested relief, which would ensure that the updated WPS training become mandatory for all farmworkers and handlers, and would provide Plaintiffs and their members with recourse if employers do not provide the expanded training.

18. Defendant EPA is an agency of the United States government. EPA promulgated the WPS and is responsible for overseeing its timely implementation. EPA's failure to publish a notice of availability for the updated WPS training materials is challenged here.

19. Defendant Scott Pruitt, Administrator of the EPA, has oversight authority for all actions taken by EPA and is responsible for ensuring the agency's compliance with the law. Defendant Pruitt is sued in his official capacity.

## **LEGAL BACKGROUND**

### **I. FIFRA AND THE WORKER PROTECTION STANDARD REGULATIONS**

20. EPA is required by, and authorized under, the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") to ensure that workers are protected from pesticides so that the use of pesticides does not cause "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.”  
*See* 7 U.S.C. §§ 136w(a), 136(bb), 136a. Pursuant to this authority, EPA has implemented measures to protect workers, handlers, and others from pesticide exposure in two primary ways: (1) through specific use instructions and restrictions on pesticide product labeling and (2) through the WPS, 40 C.F.R. pt. 170. *See* 80 Fed. Reg. at 67,500.

21. The WPS, originally promulgated in 1974 and substantively revised in 1992, is a uniform set of requirements for farmworkers, pesticide handlers, and their employers, which provides a comprehensive collection of pesticide management practices that apply generally to agricultural pesticide use in crop production and complements the product-specific requirements on individual pesticide product labels. *Id.* In EPA’s own words, “[t]he WPS plays an important role in reducing the risk of pesticide illness and injury among agricultural workers and pesticide handlers” because it “offers occupational protections to over 2 million agricultural workers . . . and pesticide handlers . . . who work at over 600,000 agricultural establishments (farms, forests, nurseries and greenhouses).” EPA Office of Inspector General, EPA Needs to Evaluate the Impact of the Revised Agricultural Worker Protection Standard on Pesticide Exposure Incidents, Report No. 18-P-0080 at 13 (Feb. 15, 2018), [https://www.epa.gov/sites/production/files/2018-02/documents/epaig\\_20180215-18-p-0080.pdf](https://www.epa.gov/sites/production/files/2018-02/documents/epaig_20180215-18-p-0080.pdf).

22. The rule—with its three key components of information, protection, and mitigation—is “designed to reduce the risks of illness or injury resulting from workers’ and handlers’ occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests and also from the accidental exposure of workers and other persons to such pesticides.” 40 C.F.R. § 170.1. A central element of the “information” component of the WPS is the requirement for employers to provide workers and handlers with



the information they need to protect themselves, others, and the environment from pesticides and pesticide residues through effective pesticide training. *See* 80 Fed. Reg. at 67,501.

23. “Workers” protected by the WPS are individuals who are employed to “perform[] activities relating to the production of agricultural plants on an agricultural establishment . . . .” 40 C.F.R. § 170.3. “Handlers” are individuals employed by an agricultural establishment or commercial pesticide handling establishment who, among other things, mix, load, or apply pesticides; dispose of pesticides; or handle opened containers of pesticides. *Id.*

24. Under the WPS as revised in 2015, employers are required to provide annual training to workers and handlers that must include certain specified content. *See id.* § 170.401(c)(2)(i)-(xi); *id.* § 170.501(c)(2)(i)-(xiii). The 2015 rulemaking revised the WPS to expand, update, and improve the training content, which had previously dated back to 1992. *See* 80 Fed. Reg. at 67,501.

25. The WPS specifies that the agency “intends to make available to the public” the training materials that include the updated content required by the 2015 revision. 40 C.F.R. § 170.401(c)(3); *id.* § 170.501(c)(3). The WPS also mandates that “[w]ithin 180 days after a notice of availability of such training materials appears in the Federal Register, . . . training programs required under this section must include, at a minimum,” the new content set forth in the 2015 regulations. 40 C.F.R. § 170.401(c)(3); *id.* § 170.501(c)(3).

## **II. ADMINISTRATIVE PROCEDURE ACT**

26. The APA, as amended by the Freedom of Information Act, mandates that “[e]ach agency shall separately state and currently publish in the Federal Register for the guidance of the public . . . descriptions of forms available or the places at which forms may be obtained.” 5 U.S.C. § 552(a)(1)(C).

27. The APA also provides for judicial review of agency action, 5 U.S.C. § 702, and authorizes the reviewing court to “compel agency action unlawfully withheld” and to “hold unlawful and set aside agency action . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* § 706.

### **III. FEDERAL REGISTER ACT**

28. The Federal Register Act mandates that “[t]here shall be published in the Federal Register . . . documents or classes of documents that may be required so to be published by Act of Congress.” 44 U.S.C. § 1505(a)(3).

29. The Act requires that “a document required or authorized to be published by section 1505 of this title shall be filed with the Office of the Federal Register.” *Id.* § 1503. The Office is then required to “transmit immediately to the Government Publishing Office for printing, as provided by this chapter, one duplicate original or certified copy of each document required or authorized to be published by section 1505 of this title.” *Id.*

## **FACTUAL BACKGROUND**

### **I. PESTICIDE EXPOSURE AMONG AGRICULTURAL WORKERS AND THEIR FAMILIES**

30. The approximately 2.1 million farmworkers who are employed annually on crop farms in this country are laboring in an industry known to be among the most hazardous. *See* National Institute of Occupational Safety and Health (NIOSH), Agricultural Safety, <https://www.cdc.gov/niosh/topics/aginjury/default.html>.

31. EPA estimates that approximately 1,800 to 3,000 acute pesticide exposure incidents occur each year on agricultural establishments covered by the WPS. 80 Fed. Reg. at 67,502. These figures, although they account for underreporting, necessarily are estimates, given

that studies suggest that underreporting of pesticide exposure by farmworkers and handlers ranges from 20 to 90 percent. 79 Fed. Reg. at 15,449.

32. Moreover, these figures do not include the more difficult to quantify chronic pesticide exposure that a sizeable portion of the agricultural workforce may be subjected to, which poses significant short and long-term health risks. *See id.* at 67,498-99. Peer-reviewed scientific literature demonstrates well-documented associations between pesticide exposure and certain cancer and non-cancer chronic health effects. *Id.* at 15,450.

33. In addition to presenting a high risk for fatal and nonfatal injuries for the workers themselves, farming is one of the few industries in which family members of workers are also at risk for injuries. NIOSH, Agricultural Safety, <https://www.cdc.gov/niosh/topics/aginjury/default.html>. Health incident surveillance data and studies show that workers and handlers bring home pesticide residues on their bodies and clothing and thereby expose family members, including children, to pesticides. 80 Fed. Reg. at 67,502.

34. The high risks associated with labor in the agricultural sector—for workers and their families—is particularly troubling in light of the vulnerable and disadvantaged populations that largely occupy this sector. According to the Department of Labor, 70 percent of agricultural workers in the United States were born in Mexico, and Central and South America. *Id.* Approximately 65% of these workers speak little or no English, and many have received minimal formal education. *Id.* A vast majority of agricultural workers do not have access to employer-provided health-insurance, and most workers fear seeking medical treatment as they fear being replaced or fired for being “troublemakers.” *Id.* A majority of workers reported a total family income below \$22,500, *id.*, and many do not have permanent housing and generally

live close to the agricultural areas where they work and where pesticides are applied. 79 Fed. Reg. at 15,457.

## II. THE 2015 REVISIONS TO THE WORKER PROTECTION STANDARD

35. In 2014, EPA issued a proposed rule to revise the WPS in light of data showing that the existing 1992 rule was inadequate. 79 Fed. Reg. at 15,450. There was “strong evidence that workers and handlers may be exposed to pesticides at levels that can cause adverse effects and that both the exposures and the risks can be substantially reduced” through more protective regulations. *Id.* at 15,446. In particular, EPA’s review of occupational pesticide exposure in agriculture indicated “that many incidents might have been avoided if workers and handlers had better training.” *Id.* at 15,449.

36. After receiving thousands of public comments, EPA issued a final rule updating and revising the WPS in 2015. The new rule strengthened elements of the then-existing regulation, including setting a minimum age of 18 years old for handlers and workers performing certain tasks and improving pesticide safety and hazard communication. EPA intended its revision of the WPS to “reduce avoidable incidents by improving information, protections, and mitigations for workers and handlers without imposing unreasonable burdens on employers.” 80 Fed. Reg. at 67,502.

37. One important element of the final rule’s improvement on the 1992 rule was the expansion of training content for workers and handlers. *See id.* at 67,555.

38. The updated training content for workers finalized in the 2015 rule includes the following topics not included in the training for workers under the 1992 rule:

- “The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been

trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.” 40 C.F.R. § 170.401(c)(3)(i).

- “How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide-treated areas on the establishment.” *Id.* § 170.401(c)(3)(ii).
- “How to follow directions and/or signs about keeping out of pesticide-treated areas subject to a restricted-entry interval and application exclusion zones.” *Id.* § 170.401(c)(3)(iii).
- “[I]f pesticides are spilled or sprayed on the body, to use decontamination supplies to wash immediately or rinse off in the nearest clean water . . . and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.” *Id.* § 170.401(c)(3)(ix).
- “When working in pesticide-treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.” *Id.* § 170.401(c)(3)(xi).
- “Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.” *Id.* § 170.401(c)(3)(xii).

- “Wash work clothes before wearing them again and wash them separately from other clothes.” *Id.* § 170.401(c)(3)(xiv).
- “Safety data sheets provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:
  - (A) Display safety data sheets for all pesticides used on the establishment.
  - (B) Provide workers and handlers information about the location of the safety data sheets on the establishment.
  - (C) Provide workers and handlers unimpeded access to safety data sheets during normal work hours.” *Id.* § 170.401(c)(3)(xvi).
- “The rule prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.” *Id.* § 170.401(c)(3)(xvii).
- “The responsibility of agricultural employers to provide specific information to workers before directing them to perform early-entry activities. Workers must be 18 years old to perform early-entry activities.” *Id.* § 170.401(c)(3)(xviii).
- “Potential hazards to children and pregnant women from pesticide exposure.” *Id.* § 170.401(c)(3)(xix).
- “Keep children and nonworking family members away from pesticide treated areas.” *Id.* § 170.401(c)(3)(xx).

- “After working in pesticide-treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.” *Id.* § 170.401(c)(3)(xxi).
- “How to report suspected pesticide use violations to the State or Tribal agency responsible for pesticide enforcement.” *Id.* § 170.401(c)(3)(xxii).
- “The rule prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this rule, or because the worker or handler provided, caused to be provided or is about to provide information to the employer or the EPA or its agents regarding conduct that the employee reasonably believes violates this part, and/or made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this rule.” *Id.* § 170.401(c)(3)(xxiii).

39. For handlers, the updated training content includes all the topics covered for workers. In addition, the updated training content for handlers includes the following additional topics that are not covered in the 1992 rule:

- “Information on proper application and use of pesticides.” *Id.* § 170.501(c)(3)(ii).
- “Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.” *Id.* § 170.501(c)(3)(iii).
- “Handlers must not apply pesticides in a manner that results in contact with workers or other persons.” *Id.* § 170.501(c)(3)(ix).
- “Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.” *Id.* § 170.501(c)(3)(xi).

- “Handlers must be at least 18 years old.” *Id.* § 170.501(c)(3)(xii).
- “The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.” *Id.* § 170.501(c)(3)(xiii).
- “The responsibility of agricultural employers to post treated areas as required by this rule.” *Id.* § 170.501(c)(3)(xiv).

40. EPA concluded in the 2015 rulemaking that “[t]he expansion of information provided in the training will enable workers and handlers to better protect themselves and their families, by increasing their knowledge of how to reduce take-home residues from treated areas.” 80 Fed. Reg. at 67,509.

41. Employers are required to ensure that farmworkers and handlers receive training that meets the requirements of the WPS. 40 C.F.R. §§ 170.401(a), 170.501(a). Employers who fail to perform their duties under the WPS are subject to civil penalties, and if the violation is knowing, to criminal sanctions. *Id.* § 170.9(b).

42. The changes to the 1992 requirements as a whole were expected to result in “an overall reduction in incidents of unsafe pesticide exposure and to improve the occupational health of the nation's agricultural workers and pesticide handlers.” 80 Fed. Reg. at 67,498. EPA concluded that “the rule would improve the health of agricultural workers and handlers by, among other things, increasing the frequency of training [and] enhancing training content to include ways to minimize pesticide exposure to children and in the home . . . .” *Id.* at 67,556.

43. EPA estimated the benefits of the 2015 regulation to exceed \$64 million per year “in terms of avoided costs associated with occupational pesticide incidents and with reductions in chronic diseases associated with occupational pesticide exposure.” *Id.* at 67,498.



44. EPA found that the “[t]he unquantified benefit to adolescent workers and handlers, as well as to children of workers and handlers” of this improved training, along with other requirements in the WPS, “is great.” *Id.* at 67,499. The agency anticipated that the final rule would “prevent unreasonable adverse effects from exposure to pesticides among agricultural workers and pesticide handlers, vulnerable groups (such as minority and low-income populations, child farmworkers, and farmworker families) and other persons who may be on or near agricultural establishments . . . .” *Id.* at 67,496.

45. In determining the timing for implementation of the new training requirements, EPA wanted to “allow time for new training materials to be developed and made available, and to give employers, trainers, and other affected stakeholders time to make the necessary changes.” *Id.* at 67,553. The agency therefore provided that the expanded training content would not be required as a part of training before January 1, 2018, or approximately two years after the rule was finalized. *See* 40 C.F.R. § 170.401(c)(3); *id.* § 170.501(c)(3).

46. EPA also “linked the implementation date for the revised pesticide safety training requirements for workers and handlers to the availability of new revised training materials that satisfy the new rule requirements” so that the new training content would become a mandatory part of training “[w]ithin 180 days after a notice of availability of such training materials appears in the Federal Register.” 80 Fed. Reg. at 67,553; 40 C.F.R. § 170.401(c)(3); *id.* § 17.501(c)(3).

47. EPA acknowledged “that it is important for workers and handlers to have the new safety training information as soon as possible,” and therefore expressed its intent “to have new training materials developed and disseminated as soon as practical.” 80 Fed. Reg. at 67,553.

### **III. THE DECEMBER 2017 FEDERAL REGISTER NOTICE**

48. On December 21, 2017, two years after it issued the final rule revising the WPS, EPA published a notice in the Federal Register indicating that it “expects to publish a Notice of

Proposed Rulemaking in FY 2018 to solicit public input on proposed revisions to the WPS requirements for minimum age, designated representative, and application exclusion zone”—three provisions that the 2015 rule had incorporated into the WPS. Pesticides; Agricultural Worker Protection Standard; Reconsideration of Several Requirements and Notice About Compliance Dates, 82 Fed. Reg. 60,576, 60,576 (Dec. 21, 2017).

49. In the notice, EPA acknowledged that the three provisions it intended to reopen for revision were already in effect and that “[t]he only requirements in the revised WPS that will not be in effect as of January 1, 2018 are the requirements that the worker and handler pesticide safety training material cover the expanded content at 40 CFR 170.401(c)(3) and 170.501(c)(3).” *Id.* at 60,577.

50. EPA noted that “[w]hile there are training materials available that meet the expanded content requirement, EPA has not yet published a Federal Register notice announcing their availability and does not plan to issue such a notice until the rulemaking process on the minimum age, designated representative and application exclusion zone requirements is complete.” *Id.* The updated training materials that include the expanded content set forth in the 2015 regulation are posted on the website of the Pesticide Educational Resources Collaborative (“PERC”) at <http://pesticideresources.org/wps/inventory.html>. PERC is a collaborative of the University of California Davis Extension and Oregon State University, funded by EPA to produce pesticide educational materials.

51. As a result of EPA’s failure to publish the notice of availability of these admittedly available materials, “pesticide safety training for workers and handlers may continue to be conducted using EPA-approved ‘old’ materials (covering the topics in the August 21, 1992 WPS . . . ).” *Id.*

### **FIRST CAUSE OF ACTION**

52. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 51.

53. In finalizing the 2015 revisions to the WPS, EPA noted the importance of providing updated safety training information “as soon as possible” to prevent avoidable incidents of pesticide exposure and harm to workers, handlers, and their families. 80 Fed. Reg. at 67,553.

54. The agency has since developed the updated safety training materials, and these materials are publicly available. But EPA now refuses to publish a notice of their availability in the Federal Register, thereby avoiding the regulatory trigger that would ensure workers and handlers are trained with this new and updated information and therefore fully protected under the WPS. *See* 40 C.F.R. §§ 170.401(c)(3), 170.501(c)(3).

55. EPA’s failure to publish in the Federal Register a notice that these documents are available despite the fact that they are available is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2)(A).

### **SECOND CAUSE OF ACTION**

56. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 51.

57. The WPS provides that the expanded and improved training content set forth in the 2015 revision will become mandatory within 180 days after EPA’s publication of a notice of availability of such training materials. 40 C.F.R. §§ 170.401(c)(3), 170.501(c)(3).

58. Despite EPA’s acknowledgement that the new training materials are available, the agency is refusing to publish a notice of availability of these documents in the Federal Register. 82 Fed. Reg. at 60,577.

59. As a result of EPA's refusal to publish the notice of availability, the updated training requirements set forth in the WPS are not in effect. That means that training content that EPA itself deemed crucial for the safety of farmworkers, handlers, and their families is not being uniformly provided to workers, and workers have no recourse under the WPS. *See* 40 C.F.R. § 170.9.

60. EPA's failure to publish a notice of availability of the new training materials in the Federal Register constitutes agency action unlawfully withheld and unreasonably delayed. 5 U.S.C. § 706(1).

### **THIRD CAUSE OF ACTION**

61. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 51.

62. The APA requires that "[e]ach agency shall separately state and currently publish in the Federal Register for the guidance of the public . . . descriptions of forms available or the places at which forms may be obtained." 5 U.S.C. § 552(a)(1)(C).

63. EPA has developed standardized training materials for workers and handlers that meet the expanded content requirement of its own regulations. *See* 82 Fed. Reg. at 60,577. These forms are publicly available.

64. EPA's failure to publish in the Federal Register a description of these available materials or the places at which they may be obtained violates the APA, 5 U.S.C. § 552(a)(1)(C), and constitutes an agency action unlawfully withheld, *id.* § 706(1).

### **FOURTH CAUSE OF ACTION**

65. Plaintiffs hereby reallege and incorporate each and every allegation in paragraphs 1 through 51.

66. The Federal Register Act provides that documents “shall be filed with the Office of the Federal Register,” 44 U.S.C. § 1503, if an Act of Congress requires that they be published in the Federal Register, *id.* § 1505(a).

67. The APA is an Act of Congress requiring that “descriptions of forms available or the places at which forms may be obtained” be published in the Federal Register. 5 U.S.C. § 552(a)(1)(C).

68. EPA has developed training materials containing the updated content required by the 2015 revisions to the WPS, and these forms are publicly available.

69. EPA’s failure to publish in the Federal Register a notice that these forms are available violates the Federal Register Act, 44 U.S.C. §§ 1503 and 1505, and constitutes an agency action unlawfully withheld, 5 U.S.C. § 706(1).

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Defendants are in violation of the APA and the Federal Register Act, as described above;
2. Enjoin Defendants to ensure immediate publication of a notice of availability of the updated WPS training materials in the Federal Register;
3. Award Plaintiffs their reasonable fees, costs, and expenses, including attorneys’ fees, associated with this litigation; and
4. Grant Plaintiffs such further and additional relief as the Court deems just and proper.

Respectfully submitted this 30th day of May, 2018,

/s/ Hannah Chang

Hannah Chang

Eve Gartner

Earthjustice

48 Wall Street, 19th Floor

New York, NY 10005

212-845-7382

hchang@earthjustice.org

egartner@earthjustice.org

Catherine Kaiman

Earthjustice

4500 Biscayne Blvd., Suite 201

Miami, FL 33137

ckaiman@earthjustice.org

Virginia Ruiz

Farmworker Justice

1126 16th St., NW, Suite LL-101

Washington, DC 20036

vrui@farmworkerjustice.org

*Counsel for Plaintiffs*