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BEEKEEPERS PREVAIL OVER THE EPA, BUT THE FIGHT'S NOT FINISHED

BY NICOLE ZUB

A triumph for beekeepers occurred in mid-May 2016, as a federal judge refused to dismiss a lawsuit claiming that the U.S. Environmental Protection Agency (EPA) illegally widened exemptions for pesticides responsible for killing bees.^[i]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_e dn1) The pesticides at issue are neonicotinoids, which are systemic pesticides.^[ii]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_e dn2) Systemic pesticides, rather than remaining on the surface of the treated plant, are taken up by the plant and transported to all tissues, including the pollen and nectar.^[iii]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_e dn3) Dubbed “neonics”, they are the most widely used insecticide globally, marketed by Syngenta and Bayer, and are readily mobile and persistent once placed into an ecosystem.^[iv]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_e dn4) This class of insecticides is known to have acute and chronic effects on pollinator species, especially honey bees; after reviewing dozens of studies from a variety of researches, the EPA’s risk-assessment team determined that bees suffer harm when they encounter levels above 25 parts per billion, which is a common level of neonics in farm fields.^[v]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_e dn5) Some beekeepers contend they have lost more colonies of honey bees from neonic effects in the last ten years than in they have in all their years of beekeeping.^[vi]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_e dn6) Moreover, research shows neonic coatings have profoundly negative consequences on birds, butterflies, and other wildlife, as well.^[vii]

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The plaintiffs, represented by the Center for Food Safety, claim the EPA failed to regulate pesticide-coated seeds and dust-off, which is required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).[viii] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_edn8) In 2013, the EPA released a document stating that pesticide-coated seeds are exempt from registration under FIFRA, which plaintiffs allege was a final agency action.[ix] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_edn9) Those exemptions then allowed for coated seeds to be planted on more than 150 million acres of land.[x] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_edn10) Additionally, the lawsuit declares that the EPA did not require enforceable labels on seed bags, nor did the EPA engage in adequate assessments of serious environmental harm from continued use of neonics.[xi] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_edn11)

The EPA filed a motion to dismiss for lack of subject matter jurisdiction, which was denied by Judge William Asup of the U.S. District Court for the Northern District of California.[xii] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_edn12) Judge Asup determined that without more evidence, he could not find that the 2013 guidance document constituted a “final agency action” as defined under the Administrative Procedure Act.[xiii] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_edn13) The EPA has until the end of June 2016 to turn over emails and other internal files regarding the guidance document, but more disputes are bound to occur before that date.[xiv] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_edn14) For now, this is still a significant victory for beekeepers and environmentalists across the country.

[i] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref1) Nicholas Iovino, *Beekeepers Win Round 1 in EPA Pesticide Fight*, Courthouse News Service (May 13, 2016, 8:33 AM), <http://www.courthousenews.com/2016/05/13/beekeepers-win-round-1-in-epa-pesticide-fight.htm>.

[ii] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref2) Tom Philpott, *The EPA Finally Admitted That the World’s Most Popular Pesticide Kills Bees – 20 Years Too Late*, Mother Jones (Jan. 7, 2016, 3:08 PM), <http://www.motherjones.com/tom-philpott/2016/01/epa-finds-major-pesticide-toxic-bees>.

[iii] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref3) *Neonicotinoids*, Pesticide Action Network *uk*, <http://bees.pan-uk.org/neonicotinoids> (last visited May 30, 2016).

[iv] (file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref4) Philpott, *supra*, note ii.

[v]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref5) *Id.*

[vi]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref6) *Beekeeper, Farmers, and Public Interest Groups Sue EPA over Failed Oversight of Neonicotinoid-coated Seeds*, Center for Food Safety (Jan. 6, 2016), <http://www.centerforfoodsafety.org/issues/304/pollinators-and-pesticides/press-releases/4197/beekeeper-farmers-and-public-interest-groups-sue-epa-over-failed-oversight-of-neonicotinoid-coated-seeds> [hereinafter *Failed Oversight of Neonicotinoid-coated Seeds*].

[vii]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref7) Philpott, *supra*, note ii.

[viii]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref8) Iovino, *supra*, note i.

[ix]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref9) *Id.*

[x]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref10) *Failed Oversight of Neonicotinoid-coated Seeds*, *supra* note vi.

[xi]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref11) *Id.*

[xii]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref12) Iovino, *supra*, note i.

[xiii]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref13) *Id.*

[xiv]

(file:///C:/Users/Evan/Documents/KJournal/Online%20Editor%20Stuff/Blog%20Posts/BlogPost_Zub.docx#_ednref14) *Id.*

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