Court File No. T-169-23

FEDERAL COURT

BETWEEN:

FRIENDS OF THE EARTH CANADA, DAVID SUZUKI FOUNDATION, SAFE FOOD MATTERS INC., AND ENVIRONMENTAL DEFENCE CANADA INC.

Applicants

- and -

ATTORNEY GENERAL OF CANADA, MINISTER OF HEALTH, AND LOVELAND PRODUCTS CANADA INC.

Respondents

RESPONDENT'S RECORD FOR LOVELAND PRODUCTS CANADA INC

VOLUME 2 OF 2

Respondent's Memorandum of Fact and Law

April 26, 2024

BORDEN LADNER GERVAIS LLP
1900, 520 3rd Ave. SW
Calgary, Alberta T2P 0R3

Karen Salmon / Loni da Costa

(403) 232-9500 telephone
(403) 266-1395 facsimile

Solicitors for the Respondent,
Loveland Products Canada Inc

TO: **FEDERAL COURT OF CANADA**
180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

AND TO: **Laura Bowman**
lbowman@ecojustice.ca
416-368-7533 ext 522

Bronwyn Roe
broe@ecojustice.ca
416-368-7533 ext 529

Ali Naraghi
anaraghi@ecojustice.ca
416-368-7533 ext 528
1910-777 Bay Street, PO Box 106
Toronto, ON M5G 2C8
Fax: 416-363-2746

Solicitors for the Applicants (Moving Parties),
Friends of the Earth Canada, David Suzuki Foundation,
Safe Food Matters Inc., and
Environmental Defence Canada

AND TO: **ATTORNEY GENERAL OF CANADA**
Department of Justice
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1

Andrea Bourke
Andrea.Bourke@justice.gc.ca
647-256-7471

Renuka Koilpillai
Renuka.Koilpillai@justice.gc.ca
416-458-5530

Solicitors for the Respondents,
Attorney General of Canada and Minister of Health

TABLE OF CONTENTS

Court File No. T-169-23

FEDERAL COURT

BETWEEN:

FRIENDS OF THE EARTH CANADA, DAVID SUZUKI FOUNDATION, SAFE FOOD MATTERS INC., AND ENVIRONMENTAL DEFENCE CANADA INC.

Applicants

- and -

ATTORNEY GENERAL OF CANADA, MINISTER OF HEALTH, AND LOVELAND PRODUCTS CANADA INC.

Respondents

RESPONDENT'S MEMORANDUM OF FACT AND LAW

TABLE OF CONTENTS

OVERVIEW

1. The Respondent Loveland Products Canada Inc. ("Loveland") is the registrant of the Mad Dog Plus product, a product containing glyphosate. While the renewal of this product is the subject of this Judicial Review, the Applicants appear to have targeted this particular product renewal not on account of the related product being uniquely objectionable in some way, but simply because it is an example of a recently renewed product containing glyphosate. The Applicants, through this Judicial Review and in challenging the Mad Dog Plus registration renewal, have launched what can only be viewed as a peripheral attack on the active ingredient glyphosate. They have done this despite the existence and availability of other more appropriate avenues through which to do so, in an effort to subvert these robust processes and impractically and without legal foundation, infuse the same layers of review inherent in these processes, into renewals as well.

2. The Mad Dog Plus renewal application was completed in accordance with the PMRA's process and requirements. Approval of the renewal was well within the discretion of the Pest Management Regulatory Agency (the "PMRA") and was reasonable. That the renewal of the Mad Dog Plus product may not be consistent with the broader objectives of the Applicants is not relevant to the determination of the sole issue to be decided in this Judicial Review, that being whether the decision by the PMRA to renew the Mad Dog Plus registration was reasonable. The fact is that PMRA's decision was reasonable, must not be disturbed and in fact must be affirmed and upheld.

PART I FACTS

3. In April of 2017, the PMRA issued its most recent re-evaluation decision concerning glyphosate, thereby granting continued registration of products containing this ingredient, including Mad Dog Plus, for sale and use in Canada.[1]

---

[1] Affidavit of Mary Lou McDonald, affirmed December 15, 2023 at para. 12 [Applicants' Record ("AR") Tab 4 at 1353]; Gaillardon Affidavit at para. 3 [RR, Tab 1 at 2].

4. On June 1, 2022, Loveland received notice from the PMRA that the registration for the Mad Dog Plus product would expire on December 31, 2022. In order to continue the registration, a Renewal application/form was required to be submitted for processing by the PMRA.[2]

5. In its June 1, 2022 correspondence, the PMRA directed Loveland to its web page "for guidance, updates and to access the required form for completing the application" for renewal, and indicated the renewal fee of $90.[3] While the PMRA retains discretion to request additional information from an applicant for a renewal should it determine that this would be warranted, there was no request for any information to be provided by Loveland in connection with the Mad Dog renewal application, other than the information set out on the prescribed form, which was required to be completed.[4]

6. In advance of both the deadline for submission and expiry of the Mad Dog Plus existing registration, on August 9, 2022, Loveland completed and submitted the Application for Renewal along with the required fee.[5]

7. On December 28, 2022, Loveland received confirmation from the PMRA that the Application for Renewal had been granted and the registration of the Mad Dog Plus product had been renewed for period of 5 years (the "Renewal Decision").[6]

8. On January 20, 2023, the Applicants brought the within Application for Judicial review of the Renewal Decision.

PART II ISSUES

9. The sole issue before the Court in this proceeding is whether the Renewal Decision was reasonable.

---

[2] Gaillardon Affidavit at para. 4 and Exhibit A [RR, Tab 1 at 2 and 6].
[3] Gaillardon Affidavit at Exhibit A [RR, Tab 1 at 6].
[4] Gaillardon Affidavit at Exhibit A [RR, Tab 1 at 6].
[5] Gaillardon Affidavit at para. 5 [RR, Tab 1 at 2].
[6] Gaillardon Affidavit at para. 6 and Exhibit C [RR, Tab 1 at 2 and 12].

PART III SUBMISSIONS

Law of Judicial Review

10. The parties are in agreement that a reasonableness standard of review applies in this instance.

11. On the direction of the Supreme Court, in conducting its reasonableness review, this Honourable Court must respect the administrative decision maker and its specialized expertise.[7] It must conduct its reasonableness review with a "starting point in judicial restraint and [respect for] the distinct role of administrative decision makers".[8]

12. This Court's role in applying the reasonableness standard must "not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem".[9] Instead, this Court's role is to "consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was reasonable".[10]

Loveland's Application for Renewal of the Mad Dog Plus Registration

13. The regulation of pest control products in Canada is governed by the *Pest Control Products Act* ("*PCPA*")[11] and the *Pest Control Products Regulations* (the "*PCP Regs*").[12]

14. Loveland is in agreement with the Applicants and the Supreme Court of Canada that it is trite law that "the words of a statute must be read in their entire context

---

[7] *Vavilov* at para. 75.
[8] *Vavilov* at para. 75.
[9] *Vavilov* at para. 83.
[10] *Vavilov* at para. 83.
[11] *PCPA*, SC 2002, c. 28;
[12] *PCP Regs*, SOR/2006-124.

and in their grammatical and ordinary sense harmoniously with the scheme of the Act , the object of the Act, and the intention of the Parliament".[13]

15. As distinct from statutory scheme for product registrations and amendments derived primarily from the *PCPA*, the process for renewals is set out in the *PCP Regs*.[14] Section 16 of the *PCP Regs* sets out the requirements for renewal applications and referentially incorporates the requirements of subsections 6(1) and 6(3) and section 8 therein.

16. Subsections 6(1) and 6(3) of the *PCP Regs* set out, with mandatory language, the information required to be included in an application for (by virtue of its reference in Section 16) registration renewals. Section 8 of the *PCP Regs* by contrast, uses permissive language, and sets out additional information that may or may not be required by the Minister at the Minister's sole discretion. In the case of the Mad Dog Plus renewal application, the PMRA did not make any requests for information beyond that which was included in the renewal application form, as was well within its discretion per section 8. Loveland completed the renewal application form and provided all of the information required therein.

Post-Market Evaluation Mechanisms

17. Distinct from the renewals process set out under the *PCP Regs*, the *PCPA* provides more robust and science-based risk assessment and risk management methods for the ongoing and cyclical post market evaluation of pesticide products, including the processes of re-evaluation and special reviews.[15] Both of these can be initiated at the Minister's discretion or as a result of various legislated triggers.[16]

18. The purpose of the re-evaluation process is to re-evaluate registered pesticides on a cyclical basis to determine whether the use of these products continues to be

[13] Applicants' Memorandum of Fact and Law at para. 29, [AR, Tab 11 at 1950]; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 117-118 ("*Vavilov*").
[14] *PCP Regs*, SOR/2006-124.
[15] Gaillardon Affidavit, Exhibit G at Section 3.0 [RR, Tab 1 at 114-115].
[16] *PCPA*, Sections 16-17; Gaillardon Affidavit, Exhibits E and G [RR, Tab 1 at 53 and 112].

acceptable according to current standards.[17] Per the *PCPA*, re-evaluations are initiated at the Minister's discretion where the Minister considers that, since the product was registered, there has been a change in the information required, or the procedures used, for the evaluation of the health or environmental risks or the value of the pest control products of the same class or kind, and in any event after 15 years have elapsed since the most recent decision of that type.[18]

19. The purpose of a special review is to address specifically the identified aspects of concern, on a narrower scope than a re-evaluation, at the instance of various legislated triggers.[19]

20. In completing its renewal application for the Mad Dog Plus product, neither of the post-market evaluation methods of re-evaluation or special review was engaged. There is no requirement that PMRA undertake a review akin to or resembling that which would be invoked in the case of either a re-evaluation or a special review in processing Loveland's application for renewal of the Mad Dog Plus product. To impose this requirement would be impractical given the resources and time required to complete these undertakings through the existing processes, but would also be duplicative of these very processes as well. The Applicants have pointed to the delays associated with the re-evaluation and special review processes.[20] To adopt the process argued for by the Applicants would transfer to and duplicate these delays in the renewal process, leading to a highly impractical result.

21. While the Applicants wish to turn the renewals process into a special review or re-evaluation, or into some additional category of post-market analysis, the fact is that the existing renewals process is none of those things. The PMRA has a procedure for processing renewals, and that process was followed fully and completely by Loveland in its Mad Dog Plus product registration renewal application. When viewed in the context of a registration renewal application processed through the PMRA's renewal process, as separate and distinct from the

[17] Gaillardon Affidavit, Exhibit E at section 2.0; [RR, Tab 1 at 54].
[18] *PCPA*, Section 16; Gaillardon Affidavit, Exhibits E and G [RR, Tab 1 at 53 and 115].
[19] *PCPA*, Section 17; Gaillardon Affidavit, Exhibit G [RR, Tab 1 at 115].
[20] Applicant's Memorandum of Fact and Law at para. 44 [AR, Tab 11 at 1954].

post-market evaluation processes available to it, the Renewal Decision of the PMRA was reasonable and must be upheld.

PART IV ORDER SOUGHT

22. The Respondent Loveland seeks an Order declaring that the Renewal Decision was reasonable and that the Application is dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Calgary this 26th day of April, 2024.

BORDEN LADNER GERVAIS LLP
Karen Salmon / Loni da Costa
Counsel for the Respondent,
Loveland Products Canada Inc

PART V LIST OF AUTHORITIES

Statutes and Regulations

1. *Pest Control Products Act*, SC 2002, c. 28;

2. *Pest Control Products Regulations*, SOR/2006-124.

Jurisprudence

3. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.