

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 160 EDM 2023

SYNGENTA CROP PROTECTION, LLC and
SYNGENTA AG,

Petitioners,

v.

DOUGLAS NEMETH, *et al.*,
CHEVRON U.S.A. INC., and
FMC CORPORATION,

Respondents.

(IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION)

**SUPPLEMENT TO SYNGENTA CROP PROTECTION, LLC'S
PETITION FOR PERMISSION TO APPEAL**

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INTRODUCTION

Syngenta Crop Protection, LLC (“Syngenta Crop”) has consistently maintained that this Court’s immediate review is necessary to address whether Pennsylvania’s consent-by-registration statute, as applied to Syngenta Crop, is unconstitutional under the Dormant Commerce Clause and Due Process Clause after *Mallory v. Norfolk Southern Railway Co.*, 143 S. Ct. 2028 (2023). But that need for immediate review has only grown stronger since Syngenta Crop first raised this pressing constitutional and jurisdictional issue in this Court. Following Syngenta Crop’s last filing in this forum, ***over 100 additional out-of-state plaintiffs*** have brought suit in the Paraquat Mass Tort Program against Syngenta Crop and other defendants. And with the addition of those plaintiffs, ***587 of the 658 total plaintiffs*** in the Paraquat Mass Tort Program neither lived in nor pleaded any personal connection to Pennsylvania before filing suit there—and thus, cannot establish personal jurisdiction as to Syngenta Crop in the Commonwealth absent *Mallory*. To provide much needed constitutional clarity after *Mallory* and conclusively resolve the jurisdictional status of ***nearly 90% of the total plaintiffs*** in the Paraquat Mass Tort Program, this Court should grant Syngenta Crop’s Petition for Permission to Appeal.

ARGUMENT

On November 21, 2023, Syngenta Crop filed its Petition for Permission to Appeal the trial court's August 24, 2023 Order ("Petition"), which overruled Syngenta Crop's preliminary objection to general personal jurisdiction as for plaintiffs in the Paraquat Mass Tort Program who neither lived in nor pleaded any personal connection to Pennsylvania. In that Petition, Syngenta Crop argued that this Court's immediate review is necessary to address whether Pennsylvania's consent-by-registration statute is unconstitutional in the wake of *Mallory*, because it violates the Dormant Commerce Clause and the Due Process Clause as applied to Syngenta Crop. After Respondents Nemeth, *et al.* filed an Answer to Syngenta Crop's Petition for Permission to Appeal on December 5, 2023, Syngenta Crop filed an Application for Leave to File a Reply in Support of its Petition for Permission to Appeal and attached a proposed reply brief ("Reply").

At the time Syngenta filed its Petition on November 21, 2023, ***404 of the 459 total plaintiffs*** in the Paraquat Mass Tort Program neither lived in nor pleaded any personal connection to Pennsylvania. At the time Syngenta filed its Reply on December 5, 2024, ***479 of the 537 total plaintiffs*** in the Paraquat Mass Tort Program neither lived in nor pleaded any personal connection to Pennsylvania. And as of this writing, ***587 of the 658 total plaintiffs*** in the Paraquat Mass Tort Program neither lived in nor pleaded any personal connection to Pennsylvania. The addition of ***over***

100 additional out-of-state plaintiffs to the Paraquat Mass Tort Program since Syngenta Crop's last filing in this Court only confirms the urgent need for clarity concerning the constitutional and jurisdictional questions left in *Mallory*'s wake and raised by Syngenta Crop's Petition.

In sum, should Syngenta Crop prevail on either of its Dormant Commerce Clause or Due Process Clause arguments, the Court of Common Pleas of Philadelphia County would lack personal jurisdiction over Syngenta Crop as to each of these *584 out-of-state plaintiffs*—or *nearly 90% of total plaintiffs*—in the Paraquat Mass Tort Program.

CONCLUSION

For these reasons, as well as those explained in Syngenta Crop's Petition and Reply, this Court should grant Syngenta Crop's Petition.

Respectfully submitted,

/s/ Karl S. Myers

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VERIFICATION

I, Karl S. Myers, counsel for Syngenta Crop Protection, LLC verify that the facts stated in this *Supplement to Syngenta Crop Protection, LLC's Petition for Permission to Appeal* are true and correct to the best of my knowledge, information, and belief. This verification is made subject to the penalties of 18 P.S. §4904 relating to unsworn falsifications to authorities.

/s/ Karl S. Myers _____
Karl S. Myers

Date: April 26, 2024