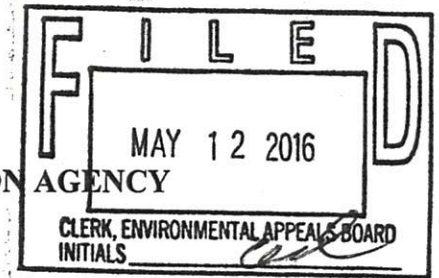


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)

Bayer CropScience LP, and Nichino)
America, Inc.)

Docket No. FIFRA-HQ-2016-0001)

FIFRA Appeal No 16-(01)

ORDER ESTABLISHING DEADLINES AND PROCEDURES FOR APPEALS

Presently pending before Chief Administrative Law Judge Susan Biro (“ALJ”) is an evidentiary hearing concerning a notice of intent to cancel conditional pesticide registrations held by Bayer CropScience LP, and Nichino America, Inc., for flubendiamide. The notice of intent to cancel was issued on February 29, 2016, by the Office of Chemical Safety and Pollution Prevention at the Environmental Protection Agency (“EPA”). Flubendiamide; Notice of Intent to Cancel Pesticide Registrations, 81 Fed. Reg. 11558, 11561 (March 4, 2016). This order addresses several procedural issues should any party to this proceeding appeal the ALJ’s Initial Decision.

EPA’s general cancellation hearing regulations in 40 C.F.R. Part 164 do not address the statutory time limit for conducting hearings on notices of intent to cancel conditional registrations. *See* 7 U.S.C. § 136d(e); 40 C.F.R. Part 164. Accordingly, the Board is issuing this order under the authority in 5 U.S.C. § 557 and 40 C.F.R. § 164.40(d) clarifying the appeal

procedures to facilitate the expeditious resolution of appeals, while simultaneously giving fair consideration to any issues raised.¹ The Board adopts the following procedures:

(1) Each party may take exception to any matter set forth in the Administrative Law Judge's Initial Decision or to any adverse order or ruling to which it objected during the hearing before the Administrative Law Judge and appeal such exception(s) to the Environmental Appeals Board. Any appeals from the Initial Decision or other adverse orders or rulings must be filed with the Environmental Appeals Board within 10 days after the Initial Decision is filed. Within that same time period, the appealing party must file its brief in support of its appeal. A document is filed with the Environmental Appeals Board on the date it is received by the Clerk of the Board.

(2) All documents must be filed electronically² with the Board or by overnight or same-day delivery.³ Parties must serve all documents filed with the Board on all other parties by overnight or same-day delivery.

¹ See *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 539 (1970) (holding that it is "always within the discretion of * * * an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it."); see also *Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council*, 435 U.S. 519, 543-44 (1978) ("Absent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." (internal quotation omitted)).

² For instructions on electronic filing, visit the Board's website at: http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/General+Information/Electronic+Submission?OpenDocument

³ The address for overnight or same-day delivery to the Clerk of the Board is:

(3) The appeal brief may not exceed 14,000 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, parties may comply with a thirty-page limit (using double spacing, twelve point font, and one inch margins). The table of contents, table of authorities, statement of compliance with the word limitation, and any exhibits do not count toward the word limitation.

(4) Any responses to the appeal from other parties or from amicus curiae must be filed no later than seven calendar days from the date the appeal is filed with the Board. The response(s) may only address the issue(s) raised in the appeal. The Board will not consider new issues. The response may not exceed 14,000 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, parties may comply with a thirty page limit. A table of contents, table of authorities, statement of compliance with the word limitation, and any exhibits do not count toward the word limitation.

(5) A motion to reopen the hearing to take further evidence under 40 C.F.R. § 164.110(b), may be filed at any time prior to issuance of a final order by the Board. A motion for reconsideration of the Board's final decision must be filed within five calendar days of the date of service of the final decision. As to motions filed under this paragraph, the non-filing party(ies) have five calendar days from date of service to file a

U.S. Environmental Protection Agency
Environmental Appeals Board
Attn: Eurika Durr
1201 Constitution Avenue, NW
WJC East, Room 3332
Washington, DC 20004

response. Motions and replies filed under this paragraph may not exceed fifteen double-spaced pages.

(6) Any party wishing to file any other motion with the Board must do so no later than five calendar days from the filing of the appeal with the EAB. The non-filing party(ies) have three calendar days from date of service to file a response. Motions and responses may not exceed five double-spaced pages. In advance of filing a motion under this paragraph, the filing parties must attempt to ascertain whether the other party(ies) concur(s) or object(s) to the motion and must indicate in the motion the attempt made and the response obtained.

(7) All motions must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion.

So ordered.

Dated: May 12, 2016

ENVIRONMENTAL APPEALS BOARD

By: Kathie A. Stein
Kathie A. Stein
Environmental Appeals Judge

AMENDED CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Establishing Deadlines and Procedures for Appeals* in the matter of Bayer CropScience LP, and Nichino America, Inc., FIFRA Appeal No. 16-(01), were sent to the following persons in the manner indicated:

By Interoffice Mail on May 12, 2016, and Email on May 18, 2016

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Dated: MAY 18 2016



Annette Duncan
Secretary
Environmental Appeals Board