

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

In re:	)	
	)	
Bayer CropScience LP, and	)	FIFRA Appeal No. 16-(01)
Nichino America, Inc.	)	
	)	
Docket No. FIFRA-HQ-2016-0001	)	

**APPELLANTS' SUBMISSION OF EXHIBITS FILED IN  
ADMINISTRATIVE LAW JUDGE PROCEEDING**

Pursuant to the Environmental Appeals Board's June 9, 2016 Revised Order Establishing Deadlines and Procedures for Appeals, Bayer CropScience LP and Nichino America, Inc. (collectively, "Appellants") hereby submit electronic copies of the exhibits that they filed in the proceeding before the Administrative Law Judge ("ALJ"). An index of the exhibits follows.<sup>1</sup>

<b><u>Exhibit Number</u></b>	<b><u>Admitted/ Excluded</u></b>	<b><u>Description</u></b>
PBNX 7	Admitted	Notices of Registration for Flubendiamide Technical (EPA Reg. No. 71711-26) and Belt® SC Insecticide (EPA Reg. No. 264-1025) (Aug. 1, 2008)
PBNX 8	Admitted	Letter from Lois Rossi (EPA Registration Division) re Preliminary Acceptance of Flubendiamide Registrations (July 31, 2008)
PBNX 9	Admitted, But Not for Substance	EPA Flubendiamide Pesticide Fact Sheet (Aug. 1, 2008)

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<sup>1</sup> Pursuant to the ALJ's May 3, 2016 Order granting Appellee United States Environmental Protection Agency's Motion to Limit Scope of Testimony (ALJ Dkt. #27) and the ALJ's ruling at the hearing, *see, e.g.*, Corrected Hearing Tr. (ALJ Dkt. #32) 96:3-22, certain of Appellants' exhibits were either: (1) excluded in their entirety; or (2) admitted in part and excluded in part; or (3) admitted, but not for substance. The "Admitted/Excluded" column in the index indicates which exhibits are included in these categories.

<b><u>Exhibit Number</u></b>	<b><u>Admitted/ Excluded</u></b>	<b><u>Description</u></b>
PBNX 10	Admitted	Letter from Richard Gebken (EPA Registration Division) re Extension of Flubendiamide Registrations to Aug. 31, 2015 (July 18, 2013)
PBNX 11	Admitted	Email from Carmen Rodia (EPA Registration Division) re Draft List of Required Additional Studies for Flubendiamide (Aug. 4, 2015)
PBNX 12	Admitted	Letter from Richard Gebken (EPA Registration Division) re Extension of Flubendiamide Registrations to Dec. 10, 2015 (Aug. 26, 2015)
PBNX 13	Admitted	Letter from Richard Gebken (EPA Registration Division) re Extension of Flubendiamide Registrations to Dec. 18, 2015 (Dec. 8, 2015)
PBNX 14	Admitted	Email from Dana Sargent (Bayer CropScience LP) re Change in Flubendiamide Ecotoxicity Endpoint (Dec. 16, 2015)
PBNX 15	Admitted	Letter from Richard Gebken (EPA Registration Division) re Extension of Flubendiamide Registrations to Jan. 15, 2016 (Dec. 18, 2015)
PBNX 16	Admitted	Letter from Richard Gebken (EPA Registration Division) re Extension of Flubendiamide Registrations to Jan. 29, 2016 (Jan. 14, 2016)
PBNX 17	Admitted	Letter from Jack Housenger (EPA Office of Pesticide Programs) re Request for Voluntary Cancellation of Flubendiamide Registrations (Jan. 29, 2016)
PBNX 18	Admitted	Letter from Dana Sargent (Bayer CropScience LP) re Refusal to Request Voluntary Cancellation of Flubendiamide Registrations (Feb. 5, 2016)
PBNX 19	Admitted	EPA Press Release, EPA Moves to Cancel the Insecticide Flubendiamide (Mar. 1, 2016)
PBNX 20	Admitted	Flubendiamide; Notice of Intent to Cancel Pesticide Registrations, 81 Fed. Reg. 11,558 (Mar. 4, 2016)
PBNX 21	Admitted, But Not for Substance	EPA BEAD Public Interest Finding for Flubendiamide (Apr. 15, 2008)

<b><u>Exhibit Number</u></b>	<b><u>Admitted/ Excluded</u></b>	<b><u>Description</u></b>
PBNX 22	Admitted, But Not for Substance	Bayer CropScience LP, A Benefits Document Supporting the Continued Registration of Flubendiamide (May 20, 2015)
PBNX 23	Admitted, But Not for Substance	EPA BEAD Review of Bayer CropScience LP Flubendiamide Benefits Document (July 24, 2015)
PBNX 24	Admitted, But Not for Substance	Bayer CropScience LP, White Paper: Flubendiamide Benefits, Aquatic Risk Assessment Summary and Proposed Path Forward (June 29, 2015)
PBNX 25	Admitted, But Not for Substance	EPA EFED Response to Bayer CropScience LP White Paper (July 15, 2015)
PBNX 26	Admitted, But Not for Substance	Letter from Jerry Baron (IR-4) re Comments on Flubendiamide Notice of Intent to Cancel (Mar. 28, 2016)
PBNX 27	Admitted, But Not for Substance	EPA EFED Risk Assessment for the Section 3 New Chemical Registration of Flubendiamide (June 23, 2008)
PBNX 28	Admitted, But Not for Substance	EPA EFED Risk Assessment for Legume Vegetable and Christmas Tree New Uses for the Insecticide Flubendiamide (May 17, 2010)
PBNX 29	Admitted, But Not for Substance	EPA EFED Ecological Risk Assessment for the New Use of Flubendiamide on Alfalfa and Certain Other Crops (Dec. 16, 2010)
PBNX 30	Admitted, But Not for Substance	EPA Decision Memorandum for Flubendiamide Cancellation (Jan. 29, 2016)
PBNX 31	Admitted, But Not for Substance	EPA EFED Flubendiamide Ecological Risk Assessment Addendum (Jan. 28, 2016)
PBNX 32	Admitted, But Not for Substance	EPA EFED Addendum to Clarify Invertebrate Terminology in Ecological Risk Assessment Addendum (Jan. 29, 2016)

<b><u>Exhibit Number</u></b>	<b><u>Admitted/ Excluded</u></b>	<b><u>Description</u></b>
PBNX 33	Admitted, But Not for Substance	Des-iodo Spiked Water Study Data Evaluation Record (May 21, 2008)
PBNX 34	Admitted, But Not for Substance	Des-iodo Spiked Sediment Study Data Evaluation Record (July 19, 2011)
PBNX 35	Admitted, But Not for Substance	EPA EFED Review of Three Reports re Three-Year Flubendiamide Water Monitoring Project (Feb. 20, 2015)
PBNX 36	Admitted, But Not for Substance	EPA EFED Response to Bayer CropScience LP Aquatic Risk Email Submission (July 8, 2015)
PBNX 37	Excluded	Ames Herbert Curriculum Vitae
PBNX 39	Excluded	2016 Insect Control Guide For Agronomic Crops (Mississippi State University Extension Publication 2471, 2016)
PBNX 40	Excluded	Ames Herbert, Virginia Soybeans: Pyrethroid Resistance Hits High Levels, So Understand Treatment Options (AgFax Aug. 20, 2012)
PBNX 41	Excluded	United States Department of Agriculture, Preventing or Mitigating Potential Negative Impacts of Pesticides on Pollinators Using Integrated Pest Management and Other Conservation Practices, Agronomy Technical Note No. 9 (Feb. 2014)
PBNX 42	Excluded	D. Ames Herbert, Jr., and Michael Flessner, Pest Management Guide Field Crops 2016 (Virginia Cooperative Extension Publication 456-016, 2016)
PBNX 43	Excluded	Dwayne Moore Curriculum Vitae
PBNX 44	Excluded	EFED Memorandum re Toxicity Testing and Ecological Risk Assessment Guidance for Benthic Invertebrates (Apr. 10, 2014)
PBNX 45	Excluded	OECD Guidelines for the Testing of Chemicals, Test No. 219: Sediment-Water Chironomid Toxicity Test Using Spiked Water (Apr. 13, 2004)

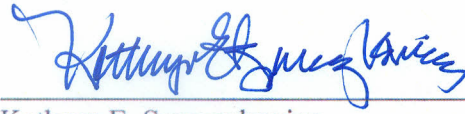
<b><u>Exhibit Number</u></b>	<b><u>Admitted/ Excluded</u></b>	<b><u>Description</u></b>
PBNX 46	Excluded	OECD Guidelines for the Testing of Chemicals, Test No. 218: Sediment-Water Chironomid Toxicity Test Using Spiked Sediment (Apr. 13, 2004)
PBNX 47	Excluded	European Commission, Working Document: Guidance Document on Aquatic Toxicology (Oct. 17, 2002)
PBNX 48	Excluded	OECD Series on Testing and Assessment No. 54: Current Approaches in the Statistical Analysis of Ecotoxicity Data: A Guidance to Application (Excerpts) (May 9, 2006)
PBNX 49	Excluded	EPA EFED Preliminary Environmental Fate and Ecological Risk Assessment for Methoxyfenozide (Excerpts) (Sept. 16, 2015)
PBNX 50	Excluded	Bernard Engel Curriculum Vitae
PBNX 51	Excluded	EPA, Guidance on the Development, Evaluation, and Application of Environmental Models (Excerpts) (Mar. 2009)
PBNX 52	Admitted	Existing Stocks of Pesticide Products; Statement of Policy, 56 Fed. Reg. 29,362 (June 26, 1991)
PBNX 80	Excluded	Figure 1 from Verified Written Statement of Bernard Engel: Monitoring Study Results from North Carolina and Georgia Ponds
PBNX 81	Excluded	Figure 2 from Verified Written Statement of Bernard Engel: Des-iodo Concentrations in Samples Taken from Creeks/Rivers in North Carolina and Georgia
PBNX 82	Excluded	Figures 3 and 4 from Verified Written Statement of Bernard Engel: Map of Flubendiamide Detections in USGS and Registrant Surface Water Samples and Map of USGS Estimated Agricultural Use for Flubendiamide in 2013
PBNX 83	Excluded	Tables 1 and 2 from Verified Written Statement of Bernard Engel: NSE, PBIAS, and $R^2$ for EFED Models and Monitoring Data for North Carolina and Georgia Sites
PBNX 84	Excluded	Table 3 from Verified Written Statement of Bernard Engel: Maximum Observed Flubendiamide and Des-iodo Concentrations Compared to Toxicity Endpoints

<b><u>Exhibit Number</u></b>	<b><u>Admitted/ Excluded</u></b>	<b><u>Description</u></b>
PBNX 100	Excluded	2016 Spray Bulletin For Commercial Tree Fruit Growers (Virginia Cooperative Extension Publication 456-419, 2016) (Excerpts)
PBNX 110	Excluded	John C. Palumbo Curriculum Vitae
PBNX 111	Excluded	J. Palumbo, IRM Guidelines For Beet Armyworm In Lettuce Vegetable, IPM Update Archive, (The University Of Arizona Cooperative Extension Aug. 20, 2014); and Insecticide Resistance Management For Beet Armyworm In Lettuce (The University Of Arizona Cooperative Extension)
PBNX 112	Excluded	John C. Palumbo, Insecticide Resistance Management Guidelines for Beet Armyworm in Lettuce, VegIPM Update, Vol. 1 No. 19 (The University Of Arizona in collaboration with the Insecticide Resistance Action Committee, Sept. 2010)
PBNX 113	Excluded	John C. Palumbo, 2015 Insecticide Usage on Arizona Lettuce, Yuma Agricultural Center, (The University of Arizona Vegetable IPM Update, Vol. 6, No. 12, June 10, 2015)
PBNX 114	Excluded	J. Palumbo, Systemic Efficacy Of Coragen Applied Through Drip Irrigation On Romaine Lettuce (Fall 2007)
PBNX 115	Excluded	J. Palumbo, Vegetable IPM Update Archive Worms In Fall Produce, (The University Of Arizona Sept. 30, 2015); and University of Arizona, Lepidopterous Larvae Management in Desert Produce Crops, 2015 (University of Arizona Vegetable IPM Update, Vol. 6, No. 4, Feb. 18, 2015)
PBNX 116	Admitted in Part, Excluded in Part	Verified Written Statement of Charlotte Sanson
PBNX 117	Admitted in Part, Excluded in Part	Verified Written Statement of Lee Hall

<u><b>Exhibit Number</b></u>	<u><b>Admitted/ Excluded</b></u>	<u><b>Description</b></u>
PBNX 118	Admitted in Part, Excluded in Part	Verified Written Statement of Jeffrey Johnson
PBNX 119	Excluded	Verified Written Statement of Bernard Engel, Ph.D.
PBNX 120	Excluded	Verified Written Statement of Dwayne R. J. Moore, Ph.D.
PBNX 121	Excluded	Verified Written Statement of Ames Herbert Jr., Ph.D.
PBNX 122	Excluded	Verified Written Statement of John Palumbo, Ph.D.
PBNX 123	Admitted	Susan T. Lewis Curriculum Vitae
PBNX 124	Excluded	78 Fed. Reg. 8123 - Rodenticides; Notice of Intent to Cancel Registrations of, and Notice of Denial of Applications for, Certain Rodenticide Bait Products (Feb. 5, 2013)
PBNX 125	Excluded	Notices of Pesticide Registration for Certain Reckitt Benckiser Rodenticide Products
PBNX 126	Excluded	EPA's Conditional Opposition to CropLife America's Motion to File an Amicus Curiae Brief, Dkt. #24, <i>In re Reckitt Benckiser</i> , FIFRA Dkt. #661 (Demonstrative) (May 6, 2013)
PBNX 127	Admitted	EPA's Opposition to Bayer & Nichino's Motion for Accelerated Decision (Demonstrative) (Apr. 18, 2016)
PBNX 128	Admitted	Letter from Jack Housenger (EPA Office of Pesticide Programs) re Response to Center for Food Safety's Feb. 11, 2016 Letter re Flubendiamide and Conditional Registrations (Mar. 28, 2016)

Dated: June 13, 2016

Respectfully Submitted,



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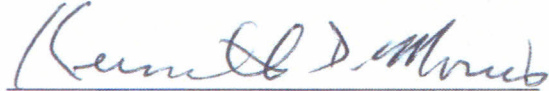
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13th day of June, 2016, a true and correct copy of the foregoing Appellants' Submission of Exhibits Filed in Administrative Law Judge Proceeding was filed electronically using the EPA EAB eFiling System; and served in the following manner to the below addressees:

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