

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

**In re FIFRA Section 6(b) Notice of Intent  
to Cancel Pesticide Registrations for  
Chlorpyrifos Products** )  
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**Gharda Chemicals International, Inc., and  
Red River Valley Sugarbeet Growers  
Association, et al.,** )  
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**Petitioners.** )  
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**Docket No. FIFRA-HQ-2023-0001**

**PETITIONERS’ RESPONSE TO RESPONDENT’S MOTION TO SUPPLEMENT**

Petitioners Gharda Chemicals International, Inc. (“Gharda”) and Red River Valley Sugarbeet Growers Association, U.S. Beet Sugar Association, American Sugarbeet Growers Association, Southern Minnesota Beet Sugar Cooperative, American Crystal Sugar Company, Minn-Dak Farmers Cooperative, American Farm Bureau Federation, American Soybean Association, Iowa Soybean Association, Minnesota Soybean Growers Association, Missouri Soybean Association, Nebraska Soybean Association, South Dakota Soybean Association, North Dakota Soybean Growers Association, National Association of Wheat Growers, Cherry Marketing Institute, Florida Fruit and Vegetable Association, and Georgia Fruit and Vegetable Growers Association, and National Cotton Council of America (“Growers” and together with Gharda, “Petitioners”) respectfully submit this Response to the United States Environmental Protection Agency’s (“EPA”, “Agency” or “Respondent”) Motion to Supplement its Rebuttal Prehearing Exchange (“Motion to Supplement”) filed with this Tribunal on October 4, 2023. Petitioners oppose the Motion to Supplement because the information that Respondent seeks to add has been in Respondent’s possession for no less than *16 months*. Alternatively, if this

Tribunal grants the Motion to Supplement, Petitioners request the opportunity to supplement their own Prehearing Exchange in response to the additional information provided by Respondent.

**I. Respondent Should Not be Permitted to Supplement its Prehearing Exchange Based on Information In Its Possession for 16 Months.**

EPA for the first time takes issue with two application rates from among the 11 Safe Uses<sup>1</sup> on one amended label Gharda submitted to the Agency in 2022, claiming that those two rates do not conform to the application rates from the 2020 Drinking Water Assessment (“DWA”)( PX 39), which EPA used to reach its conclusions on the 11 Safe Uses identified in EPA’s PID. In its Motion to Supplement, EPA states that “following EPA’s further review of the proposed label amendments submitted by Gharda,” EPA “discovered that application rates listed in Pilot 15G (EPA Reg. No. 93182-8) are higher than the rates that were assessed by EPA in the 2020 DWA”<sup>2</sup> and seeks to supplement the witness statement of Dr. Mary Elissa Reaves (“Reaves Statement” and, as supplemented “Supplemental Reaves Statement”) on that basis. But EPA has had the proposed label amendment submitted by Gharda for Gharda’s Pilot 15G product, EPA Reg. No. 93182-8 (“Pilot 15G”) (JX 11), since June 2022. Indeed, Respondent’s Motion to Supplement mistakenly states that “the proposed label amendments [were] submitted by Gharda in January 2023” and cites to JX 10 and JX 11. Mot. to Suppl. 4. However, JX 11 is Gharda’s proposed label amendment for the Pilot 15G product and was submitted in June 2022, not January 2023. The “corrected” supplemental witness statement of Dr. Reaves is similarly

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<sup>1</sup> The 11 Safe Uses are those uses which EPA’s Proposed Interim Decision (“PID”) (PX 41) identified as safe.

<sup>2</sup> Here, EPA implies that all application rates in the amended label for the Pilot 15G product are inconsistent with the 2020 DWA when, to the contrary, the Supplemental Reaves Statement included with the Motion to Supplement only challenges the application rates for two of the Safe Uses. Supplemental Reaves Statement 2.

erroneous. Supplemental Reaves Statement 2. EPA should not be allowed now, more than one year after receiving the proposed amended label and three months after prehearing exchanges were made, to take issue with the application rates in the proposed amended label and supplement its prehearing exchange for that reason.<sup>3</sup>

EPA has had the application rates from the Pilot 15G proposed label amendment for over one year but failed to take any action with that information until October 4. Respondent had ample opportunities to raise this concern—including in correspondence with Gharda related to the revocation of tolerances for chlorpyrifos and modification of labels, *see* Verified Witness Statement of Ram Seethapathi ¶¶ 20—26; when Gharda submitted the proposed label amendments to EPA in 2022 and 2023 or anytime thereafter; and in a multitude of briefing both in the Eighth Circuit and before this Tribunal. All parties had an obligation to thoroughly review the documentary evidence and prepare written witness statements in submitting prehearing exchanges three months ago, in July 2023. *See* Prehearing Order at 4 (“each party should very thoughtfully prepare its prehearing exchange.”). The Motion to Supplement should therefore be denied. *See In re. Adamas Constr. & Dev. Servs., PLLC*, 2021 EPA ALJ LEXIS 23 (E.P.A. Dec. 14, 2021) (Coughlin, J.) (explaining that “a motion for leave to supplement a party’s prehearing exchange may be denied, with the supplemental information thus being excluded, where the motion was not prompt. . . [or] where the record reflects evidence of bad faith or delay tactics on behalf of the filing party”); *In re. Aylin, Inc.*, 2016 EPA ALJ LEXIS 23, at \*12 (E.P.A. Mar. 2,

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<sup>3</sup> Respondent’s alleged need to supplement its Prehearing Exchange because of factual mistakes in the statement of one of its witnesses further substantiates that Respondent’s Motion for Accelerated Decision should be denied. Because there are genuine issues of material dispute as it relates to the NOIC, evidenced further by Respondent seeking to revise the information provided in its Prehearing Exchange, the NOIC should proceed to a hearing and not be decided on an accelerated basis. *See also*, Petitioners’ Opposition to Motions for Accelerated Decision.

2016) (Coughlin, J.) (explaining that a motion for leave to supplement a prehearing exchange “may be denied where the motion is not prompt” or where there is evidence of “bad faith, delay tactics, or undue prejudice”).

The Motion to Supplement cites 40 C.F.R. § 22.19(f) as supporting supplementation of prehearing exchanges. However, 40 C.F.R. § 22.19(f) provides that a party “shall *promptly* supplement or correct the exchange *when the party learns* that the information exchanged or response provided is incomplete, inaccurate or outdated.” EPA has not *promptly* supplemented its exchange when Gharda’s amended label has been in EPA’s possession for over a year. EPA has not just now “learned” that the Reaves Statement is incomplete or inaccurate—because EPA has had Pilot 15G proposed label amendment since June 2022 and has had ample opportunity to review it and request revisions. The proposed label amendment, containing the application rates that EPA now criticizes, was even included *by Respondent* in the joint exhibit submission of the Parties as part of the prehearing exchanges. *See* JX 11. Therefore, EPA should not be allowed to supplement its Prehearing Exchange at this late date.

**II. If EPA Is Permitted to Supplement Its Prehearing Exchange, Petitioners Should Similarly Be Allowed to Supplement Their Prehearing Exchange in Response.**

If this Tribunal grants the Motion to Supplement and allows EPA to revise the Reaves Statement, then Petitioners should be afforded the same opportunity to supplement their Prehearing Exchange to respond to the issues raised in the Supplemental Reaves Statement. If the Motion to Supplement is granted, Petitioners intend to file a similar Motion to Supplement Petitioners’ Prehearing Exchange and will provide an explanation as to the issues outlined by the Supplemental Reaves Statement. Petitioners would also seek to include an updated amended label for the Pilot 15G product that will address the two application rates that EPA says should be changed in order for the amended label to be consistent with the DWA. To promote fairness

and the Tribunal's evaluation of a fulsome record, Petitioners should be allowed to supplement their Prehearing Exchange responsive to any changes made by Respondent.

This 16<sup>th</sup> day of October, 2023,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2023, a true and correct copy of the foregoing Petitioners' Response to Respondent's Motion to Supplement was filed electronically with the EPA OALJ E-Filing System for the OALJ's E-Docket Database, with a copy via electronic mail to the following:

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