

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Bayer CropScience LP and) FIFRA-HQ-2016-0001
Nichino America, Inc.,)
)
)
Petitioners.)
_____)

**MOTION TO CORRECT INITIAL DECISION BY
BAYER CROPSCIENCE LP AND NICHINO AMERICA, INC.**

Petitioners Bayer CropScience LP and Nichino America, Inc. respectfully request that the Tribunal issue a corrected Initial Decision to address certain errors in quotations to the hearing transcript identified below. This Motion to Correct is similar to a motion for correction of clerical errors pursuant to Fed. R. Civ. P. 60(a) and is filed pursuant to the Tribunal’s general power under 40 C.F.R. § 164.40(d) “to take actions and decisions in conformity with statute or in the interests of justice.” Petitioners have conferred with Respondent the United States Environmental Protection Agency and Respondent does not object to this motion.

The preliminary transcript for the May 10, 2016 hearing was issued on May 13, 2016 (“Preliminary Transcript,” Dkt. No. 29). The Parties filed a Joint Motion to Conform Transcript on May 16, 2016 (Dkt. No. 30), which was granted on May 17, 2016 (Dkt. No. 31), and a corrected transcript was issued on May 18, 2016 (“Final Transcript,” Dkt. No. 32). The Final Transcript includes most of the corrections requested by the parties, although some were omitted, apparently inadvertently.

The June 1, 2016 Initial Decision provides certain transcript quotations taken from the Preliminary Transcript that differ substantively from the actual testimony given at the hearing as

reflected in the Final Transcript and/or corrections requested by the Parties and ordered by the Tribunal. Petitioners request that the Tribunal issue a corrected Initial Decision that corrects the following transcript quotations:

Initial Decision at 17 n.26:

At hearing, Ms. Sanson indicated Petitioners disagreed with EFED's finding and believe the data shows that the pesticide and its metabolite are well below the EPA's level of concern and not increasing over time, but are "**still a little bit concerned, based upon the actual use of the product.**" Tr. 125.

This should be corrected to match the Final Transcript, which reads as follows: "**and we're still below levels of concern, based on actual use of the product.**" Final Tr. 124:17-19.

Initial Decision at 18:

"The last formulation, it was September 28th [2015], **and I became aware** of the more difficult discussions with EPA on the time limit extension for conditional registration," Mr. Johnson testified. Tr. 173-74.

The Parties jointly requested that this passage be corrected to "**and I then became aware.**" Joint Mot. to Conform at 14 (Dkt. No. 30). This correction was one of several omitted from the Final Transcript, apparently inadvertently.

Initial Decision at 31:

Tr. 128 (Sanson: "**I would say it was a scientific**, but more of a political decision.")

This should be corrected to match the Final Transcript, which reads as follows: "**I would say it was not scientific**, but more of a political decision." Final Tr. 127:4-5.

Petitioners respectfully request that a corrected Initial Decision be issued before the June 13, 2016 deadline for filing an appeal to the Environmental Appeals Board, to ensure that the Initial Decision accurately reflects the testimony and the appeal proceeds on an accurate factual record.

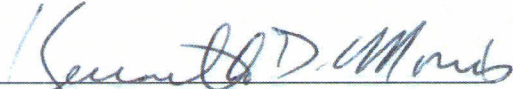
Dated: June 3, 2016

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2016, a true and correct copy of the foregoing Motion to Correct Initial Decision by Bayer CropScience LP and Nichino America, Inc. was filed electronically using the EPA OALJ e-filing system; and served in the following manner to the below addressees:

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