UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Bayer CropScience LP, and	)	**Docket No. FIFRA-HQ-2016-0001**
Nichino America, Inc.,	)	
	)	
Petitioners.	)	

ORDER ON RESPONDENT'S MOTION TO LIMIT SCOPE OF TESTIMONY

I. RELEVANT PROCEDURAL HISTORY

On March 31, 2016, Bayer CropScience LP and Nichino America, Inc. ("Petitioners") initiated this action by the filing a Request for Hearing and Statement of Objections ("Hearing Request"). The Hearing Request contests the Notice of Intent to Cancel Pesticide Registrations ("Notice") issued on February 29, 2016 by the Environmental Protection Agency ("EPA" or "Agency"). Flubendiamide; Notice of Intent To Cancel Pesticide Registrations, 81 Fed. Reg. 11558 (Mar. 4, 2016). The Notice states that EPA intends to cancel four of Petitioners' conditional pesticide registrations of flubendiamide-containing products and to prohibit the sale and distribution of the technical and end use products but allow the use of the pesticides in the possession of end users as of February 29, 2016. Further, in the Notice, EPA states that it "may amend its position regarding use of existing stocks of end-use flubendiamide products at hearing if the quantity of those products in the hands of end users increases prior to cancellation."

On April 4, 2016, an Order Scheduling Hearing and Prehearing Procedures ("Prehearing Order") was issued. The Prehearing Order directed the parties to "submit a verified written statement to serve as that witnesses' direct testimony," by April 22, 2016, for each witness identified in the parties' prehearing exchange of their primary discovery material filed in this proceeding. The parties subsequently filed their primary discovery on April 22, 2016.

Prior to the parties' exchange and filing of their primary discovery materials, on April 18, 2016, EPA filed Respondent's Motion to Limit Scope of Testimony ("Motion"). The Motion seeks to exclude "any testimony at hearing related to the issue of whether flubendiamide causes unreasonable adverse effects on the environment." On April 26, 2016, Petitioners filed Registrants Opposition to Respondent's Motion to Limit Scope of Testimony ("Opposition").

II. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Section 6(e) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) sets forth the circumstances for EPA's issuance of a notice of intent to cancel a conditional registration, and specifies distinct procedures applicable thereto:

> (1) The Administrator shall issue a notice of intent to cancel a registration issued under section 3(c)(7) of this Act if (A) the Administrator, at any time during the period provided for satisfaction of any condition imposed, determines that the registrant has failed to initiate and pursue appropriate action toward fulfilling any condition imposed, or (B) at the end of the period provided for satisfaction of any condition imposed, that condition has not been met. *The Administrator may permit the continued sale and use of existing stocks of a pesticide whose conditional registration has been canceled under this subsection to such extent, under such conditions, and for such uses as the Administrator may specify if the Administrator determines that such sale or use is not inconsistent with the purposes of this subchapter and will not have unreasonable adverse effects on the environment*.
>
> (2) A cancellation proposed under this subsection shall become final and effective at the end of thirty days from receipt by the registrant of the notice of intent to cancel unless during that time a request for hearing is made by a person adversely affected by the notice. If a hearing is requested, a hearing shall be conducted under subsection (d) of this section. *The only matters for resolution at that hearing shall be whether the registrant has initiated and pursued appropriate action to comply with the condition or conditions within the time provided or whether the condition or conditions have been satisfied within the time provided, and whether the Administrator's determination with respect to the disposition of existing stocks is consistent with this subchapter. A decision after completion of such hearing shall be final. Notwithstanding any other provision of this section, a hearing shall be held and a determination made within seventy-five days after receipt of a request for such hearing*.

7 U.S.C. § 136a(e)(emphasis added).

The procedural regulations applicable to this proceeding regarding the burden of proof provide -

> (a) At the hearing, the proponent of cancellation or change in classification has the burden of going forward to present an affirmative case for the cancellation or change in classification of the registration. In the case of the denial of an application for registration, the applicant shall have the burden of going forward. In the case of a hearing called by the Administrator, the Respondent has the burden of going forward to present an affirmative case as to the statement of issues. The party having the burden of going forward shall have the opportunity to submit evidence on rebuttal.

> (b) On all issues arising in connection with the hearing, the ultimate burden of persuasion shall rest with the proponent of the registration.

40 C.F.R. § 164.80. The EPA, as the proponent of its determination as to the disposition of existing stocks, has the general burden of coming forward with a prima facie case but the Petitioners have the ultimate burden of persuasion as the proponents of the registration. *Id. See also Stearns Elect. Paste Co. v. EPA.*, 461 F.2d 293, 304-05 (7th Cir. 1972); *Dow Chem. Co. v. Ruckelshaus*, 477 F.2d 1317, 1324-25 (8th Cir. 1973) ("Since the registrant has a continuing burden of proof to establish that its product is entitled to registration, *Southern Nat'l Mfg. Co. v. EPA*, 470 F.2d 194 (8th Cir. 1972), if the Administrator has a substantial doubt as to safety, it is his duty . . . to issue the cancellation order. And the cancellation order will remain in effect until the registrant satisfies the Agency that registration is warranted."); *In re E.I. du Pont de Nemours & Co.*, 9 E.A.D. 32, 36 n.4, 2000 EPA App. LEXIS 12, *13 n.4 (E.P.A. 2000).

III. FACTUAL BACKGROUND

On January 29, 2016, EPA sent a letter to Petitioners requesting that they voluntarily withdraw registration of their flubendiamide products. Pet'rs' Mot. for Accelerated Decision, Ex. 17, Resp'ts' Prehearing Exchange of Primary Disc., Ex. 5. The letter stated, in relevant part, the following:

> The Agency has made a determination that the continued use of the currently registered flubendiamide products will result in unreasonable adverse effects on the environment.... [Petitioners] understood and agreed by signing the PAL that if, after review of the referenced conditional data, EPA makes a determination of unreasonable adverse effects on the environment, that [Petitioners] would within one (1) week of notification of this finding submit a request for voluntary cancellation of all the flubendiamide registrations. We are hereby notifying you that we have made such a finding and under the terms of the time-limited/conditional registration, you are obligated to submit an appropriate request for voluntary cancellation to EPA by or before Friday, February 5, 2016. This request for voluntary cancellation must include a statement that [Petitioner] recognizes and agrees that the cancellation request is irrevocable. Failure to submit a timely voluntary cancellation request will result in the Agency initiating cancellation of all currently registered flubendiamide products under section 6(e) of FIFRA.

Id.

In response, Petitioners notified EPA by letter dated February 5, 2016, that they "decline EPA's request to voluntarily cancel all flubendiamide registrations."

As a result, on February 29, 2016, EPA issued its formal Notice of its intent to cancel Petitioners' flubendiamide pesticide registrations. Flubendiamide; a Notice of Intent to Cancel Pesticide Registrations, 81 Fed. Reg. 11558 (March 4, 2016). The Notice states that EPA intends to cancel four pesticide registrations containing flubendiamide "owing to the registrants' failure

to comply with a required condition of their registrations." *Id.* It asserts that under Section 6(e) of FIFRA, codified at 7 U.S.C. §136d(e), "the registrants' failure to ...submit[] requests for voluntary cancellation makes the flubendiamide products identified ...subject to cancellation." *Id.* at 11560

The Notice also contains EPA's determination regarding existing stocks of flubendiamide products. The Agency states that it intends to prohibit the use of existing stocks of the flubendiamide technical registration, and to prohibit the sale and distribution of the end use registrations. *Id.* The Agency explains that this choice is in accordance with its June 26, 1991 policy statement regarding disposition of existing stocks, which provides as follows:

> On the other hand, if a registrant of a conditional registration fails to comply with a specific condition identified at the time the registration was issued, the Agency does not believe it is generally appropriate to allow any sale and use of existing stocks if the registration is cancelled. Accordingly, the Agency does not anticipate allowing a registrant to sell or distribute existing stocks of cancelled products that were conditionally registered if the registrant fails to demonstrate compliance with any specific requirements set forth in the conditional registration.

Existing Stocks of Pesticide Products; Statement of Policy, 56 Fed. Reg. 29362, 29366–67 (June 26, 1991) ("Policy Statement").

The Agency reaches a different conclusion with regard to existing stocks of flubendiamide products currently held by end users. The Notice indicates that such products should be allowed to continue in use because the quantity currently possessed by end users is small, and "the costs and risks associated with collecting them for disposal would be high compared to those associated with the use of the cancelled product in accordance with its labeling." Notice of Intent to Cancel, 81 Fed. Reg. at 11560. EPA also notes that open containers may pose additional risk of spillage during transport, that disposal costs for open containers may be high due to testing requirements, and that notification and enforcement of end-use prohibition would impose significant costs on state and federal authorities. *Id.* The Notice does, however, state that the Agency might "amend its position . . . if the quantity of those products in the hands of end users increases prior to cancellation." *Id*.

IV. ARGUMENTS ON MOTION TO LIMIT SCOPE OF TESTIMONY

A. EPA's Arguments

In its Notice and Motion, EPA separated its existing stocks determination into two categories: (i) product remaining in the hands of end-users; and (ii) product remaining in the custody of sellers and distributors. As to the first category, the Agency asserts that it "made a determination that the risks posed by the quantities of existing stocks expected to be in end users' hands are reasonable compared to the burdens and risks associated with recovering those existing stocks," and the "Registrants have given no indication that they dispute [this determination]." Mot. at 3. The majority of EPA's Motion is directed at limiting any testimony potentially challenging the basis of the determination as to the second category.

The Agency claims that its existing stocks determination to "not allow any further sale or distribution of existing stocks is appropriate, and certainly is consistent with FIFRA, because the registrants in this proceeding . . . should not benefit from failing to comply with a specific term of their conditional registrations, and specifically should not benefit from delaying the cancellation of the flubendiamide registrations for a number of months during which time the Registrants can be expected to produce and release additional stocks that they would have not been able to lawfully release into commerce had Registrants complied with the terms of their conditional registrations."[1] Mot. at 1–2, 5. EPA further represents that it "made no determination in regard to the risks posed by existing stocks held by the registrants, distributors, and retailers; instead [it] has determined that allowing sale and distribution of those products (except for disposal) would be inconsistent with the purposes of FIFRA because it would financially reward registrants who have refused to comply with a condition of their registrations." *Id.* at 3. Respondent states that it chose "not to rely on risk-benefit issues in the Notice of Intent to Cancel and will not present any factual testimony on risk-benefit issues . . . to support its position," because doing so would have "required significantly more time and resources" and it doubts that the "75-day limitation in section 6(e) of FIFRA could accommodate a full and fair hearing on risk-benefit issues." *Id.* at 5. Therefore, EPA seeks to "bar any testimony at hearing related to the issue of whether flubendiamide causes unreasonable adverse effects on the environment because such testimony is not material to any permissible issue of fact that will be raised in the proceeding." *Id.* at 3.

B. Petitioners' Arguments

Petitioners filed their Opposition to EPA's Motion ("Opposition") on April 26, 2016. Petitioners, in their Opposition, put forth several arguments against granting the Motion. First, they note that the "admissibility standard governing the present administrative hearing is even more permissive than the federal court standard." Opp'n at 3. It cites to a portion of the FIFRA procedural rule on evidence:

> The Administrative Law Judge shall admit all relevant, competent and material evidence, except evidence that is unduly repetitious. Relevant, competent and material evidence may be received at any hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

Id., *citing* 40 C.F.R. § 164.81(a).

Next, in the Opposition, they argue the Motion violates the Agency's Policy Statement on existing stocks. Petitioners focus on the following sentence, found in the "Failure to comply with the terms of a conditional registration" section, Part III.A.2, of the Policy Statement:

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[1] EPA suggested that it would have to "reconsider whether its current practice of approving conditional registrations" if it is "unable to rely on registrant's compliance with the terms and conditions of registration," because it will be "less able to make the finding that the terms and conditions of a pesticide's registration are sufficient to conclude that the pesticide will not cause unreasonable adverse effects." *Id*. at 6.

"Where a conditional registration is cancelled (and the Agency has not identified significant risk concerns), the Agency will base its existing stocks decision on the nature of any conditions that have not been met by the registrant." Opp'n at 7 (citing Policy Statement, 56 Fed. Reg. at 29365). Because EPA *has* concluded that flubendiamide poses unreasonable adverse effects on the environment, Petitioners argue that the Agency has "identified significant risk concerns," and that therefore that section of the policy is inapposite. *Id*.

Instead, Petitioners argue that the applicable section of the Agency's Policy Statement is Part III.A.1, which governs "Cancellations where the Agency has identified particular risk concerns." *Id*. This section begins as follows:

> Whenever a pesticide registration is cancelled, the Agency will determine whether there are significant potential risk concerns associated with the use of the pesticide. If there are such concerns, the Agency generally will make a case-by-case determination as to whether to allow continued distribution, sale, or use of existing stocks of the cancelled pesticide.

Id. (citing 56 Fed. Reg. at 29365). Petitioners note that the Policy Statement goes on to provide a number of considerations the Agency *may* take into account in making a risk/benefit analysis, including "the social, economic, and environmental benefits" and corresponding risks associated with "continued distribution, sale, or use of existing stocks[;]" the "quantity of existing stocks at each level of the market[;]" the "short-term problems (if any) in switching to alternatives[;]" the "dollar amount users and others have already spent on existing stocks[;]" and the "risks and costs of disposal . . . of the pesticide[.]" *Id*. Such considerations, they argue, are precisely the type affected by the evidence they seek to admit in this proceeding.

The Petitioners further argue that a series of practical concerns undermine the Agency's Motion. It notes that the "introduction of testimony and documentary evidence on flubendiamide's risks and benefits cannot extend th[e] final [75-day] deadline" imposed by FIFRA Section 6(e), and that therefore the delay should not be a concern. *Id*. at 11. Petitioners also argue that because the witnesses' direct testimony has been submitted in writing and exchanged in advance of hearing by the parties, and EPA has stated that it would "not contest the risk-benefits evidence put forward by Registrants" regardless of the outcome of this disputed Motion, the admission of the disputed evidence should require no additional time at hearing. *Id*.

Petitioners also argue that granting the Motion would prejudice them by creating a record in which the Agency has offered "unsupported, disparaging rhetoric regarding the purported harm caused by flubendiamide, while . . . preclud[ing] any countervailing testimony from the Registrants." *Id*. at 5. Moreover, they claim,

> EPA gave at least partial consideration to the question of whether "the risks posed by the quantities of existing stocks expected to be in end users' hands are reasonable compared to the burdens and risks associated with recovering those existing stocks," and has produced testimony from its own witness on that subject.

Id. at 3–4, (citing Respondent's Motion at 3). Therefore, the Agency "cannot exclude on 'relevance' grounds the testimony and documentary evidence Petitioners have prepared that show that a fuller consideration of the risks and benefits of ongoing use and distribution of the limited existing stocks justifies a much broader existing stocks provision." *Id*. at 4.

Finally, they argue that the Agency cannot actually limit its consideration to the punitive purpose it claims as the sole basis for its existing stock determination, and thus the justification for its Motion seeking to limit other evidence.

> EPA would have to conclude that serving this punitive purpose outweighed the potential harm caused by the inefficiencies and unfairness of allowing further use only by those who happened to hold some product, the potential harm to growers caused by a sudden removal of a valuable tool for Integrated Pest Management and Insect Resistance Management, and the overall benefits of a product that poses no identified human health risks and has a favorable environmental profile compared to most likely alternatives.

Id. at 8. In order for the Agency's existing stock determination to be "consistent with" FIFRA, Petitioners suggest that the effect of the pesticide on the environment and the agricultural economy must be considered.

V. DISCUSSION

After considering the arguments of the parties, stature and the relevant legal precedent, this Tribunal finds EPA's Motion well-founded.

FIFRA Section 3 provides that -

> Except as provided by this subchapter, no person in any State may distribute or sell to any person any pesticide that is not registered under this subchapter. To the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered under this subchapter . . . .

7 U.S.C. § 136a(a). Thus, if a pesticide does not have a current, valid EPA registration, because for example, such registration has been cancelled, no one may lawfully distribute or sell it anymore, *at all*, or even use it, if the Administrator finds limiting such use is necessary to protect the environment. 7 U.S.C. § 136j ("[I]t shall be unlawful for any person in any State to distribute or sell to any person [] any pesticide that is not registered under section 136a of this title or whose registration has been cancelled or suspended . . . ."); *Rhee Bros., Inc.*, 13 E.A.D. 261, 263, 2007 EPA App. LEXIS 17, *7 (E.P.A. 2007).

However, FIFRA Section 6(e)(1) grants the Administrator the discretion to moderate the severity of that absolute outcome in the case of cancelled conditional pesticide registrations, specifically stating:

> The Administrator *may* permit the continued sale and use of existing stocks of a pesticide whose conditional registration has been canceled under this subsection to such extent, under such conditions, and for such uses as the Administrator *may* specify *if* the Administrator determines that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment.[2]

7 U.S.C. § 136d(e)(1) (emphasis added). *See also* 7 U.S.C. § 136j ("[I]t shall be unlawful for any person in any State to distribute or sell to any person [] any pesticide that is not registered under section 136a of this title or whose registration has been cancelled or suspended, except to the extent that distribution or sale has been authorized by the Administrator under this subchapter."); 40 C.F.R. 152.30(g) ("A cancelled or suspended pesticide may be distributed or sold to the extent and in the manner specified in an order issued by the Administrator concerning existing stocks of the pesticide.").

Thus, if the Administrator *chooses* to exercise her discretion and makes the duel determination that sale and/or use of a cancelled pesticide, as she so conditions, is (a) not inconsistent with FIFRA's purposes; and (b) will not have unreasonable adverse effects on the environment, she *may* allow it. *Woodstream Corp. v. Jackson*, 845 F. Supp. 2d 174, 175 (D.D.C. 2012) ("Existing stocks of a pesticide canceled under § 136d(e) may continue to be sold for as long as EPA specifies, as long as it will not have unreasonable adverse effects on the environment."); *National Coalition against Misuse of Pesticides v. EPA*, 679 F. Supp. 55 (D.D.C. 1988) (EPA's decision to permit continued sale and use of existing stocks of voluntary cancelled pesticide in the absence of the findings required by FIFRA § 6(a)(1) is arbitrary, capricious, and an abuse of discretion.); *NRDC v. EPA*, 2010 U.S. Dist. LEXIS 10631, *5–6 (S.D.N.Y. Feb. 8, 2010) (noting EPA's representation to undertake a risk-benefit analysis before allowing sale or use of existing stocks); *EDF, Inc. v. EPA*, 548 F.2d 998, 1003–1005 (D.C. Cir. 1976) (FIFRA places a "heavy burden" of explanation on an Administrator who decides to permit the continued use of a pesticide after cancellation, finding the Administrator acted arbitrarily when he failed to even inquire into the amount of stocks left, and the problem of returning and disposing of them.); *Cedar Chem. Co.*, 2 E.A.D. 584, 590, 1988 EPA App. LEXIS 49, *14-16 (E.P.A. 1988) (noting EPA's in-depth review prior to concluding the sale existing stocks proposal will not cause unreasonable adverse effects on the environment and is otherwise consistent with the purposes of FIFRA).

In this case, with regard to existing stocks held by end-users, the Administrator has undertaken the requisite analysis and made the duel determination required under FIFRA Section 6(e)(1), and based thereon has indicated her intention to exercise her discretion to continue to

[2] FIFRA defines "unreasonable adverse effects on the environment" as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." 7 U.S.C. §

permit such use. Neither Petitioners nor any Amicus is contesting that determination.[3] Thus, issue of allowing the *use* of existing stocks by end-users appears not to be in dispute and further evidence in support of the Agency's risk-benefit determination is not necessary at hearing. *Cf. Northwest Food Processors Assn v. Reilly*, 886 F.2d 1075 (9th Cir. 1989) (Intervenors contested the EPA's existing stocks determination.).

On the other hand, however, the Administrator has chosen *not* to exercise her discretion and engage in the duel determination required under FIFRA Section 6(e)(1) to authorize the *sale and distribution* of existing stocks. Rather, she has determined to prove that her determination with respect to the disposition of existing stocks is consistent with FIFRA, as she is required to do by Section 6(e)(2) at hearing, by relying on her Penalty Statement and other arguments. 7 U.S.C. § 136d(e)(2) ("The only matters for resolution at hearing shall be whether the registrant . . . compl[ied] with the condition . . . and whether the Administrator's determination with respect to the disposition of existing stocks is consistent with this subchapter."). As such, EPA claims evidence of whether the sale or distribution "will not have unreasonable adverse effects on the environment" is not relevant.

This point seem correct. Petitioners have not offered any authority for the proposition that the Administrator is required in every case when a conditional registration is cancelled to undertake the duel determination analysis under FIFRA Section 6(e)(1) with regard to existing stocks or that they, or this Tribunal, can mandate she undertake such a determination. It is noted that the section repeatedly uses the permissive term "may," rather than the mandatory term "shall." Black's Law Dictionary 883 (5th ed. 1979) (defining "may" as expressing "ability, competency, liberty, permission, possibility, probability or contingency," and "as a general rule, the word "may" will not be treated as a word of command unless there is something in context or subject matter of the act to indicate that it is used in such sense."), *citing U.S. v. Lexington Mill & E. Co.*, 232 U.S. 399, 411 (1914) and *Bloom v. Texas State Bd. Of Examiners of Psychologists*, 475 S.W.2d 374, 377 (Tex. 1972).

Further, the section does not require the Administrator to undertake such an analysis in all cases with regard to existing stocks of a cancelled conditional registration, including those where she intends to deny the continued sale or use. Rather it only requires her to undertake the determination if she wishes to affirmatively exercise her discretion to "permit the continued sale and use." 7 U.S.C. § 136d(e)(1) ("The Administrator *may* permit the continued sale and use of existing stocks . . . *if* the Administrator determines that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment."). This narrow requirement is perfectly logical in cases such as this where the registrant had only a conditional registration, *i.e.*, a limited opportunity to qualify for full indefinite registration, and has been found not to have fulfilled one of the required conditions thereof.[4]

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[3] To date, the Administrator has not indicated any intent to "amend its position regarding use of existing stocks of end-use flubendiamide products at hearing if the quantity of those products in the hands of end users increases prior to cancellation."

[4] The Petitioners' reference in its Opposition to the Agency's Policy Statement Section III(A)(1) in an effort to suggest that it must undertake a risk-benefit analysis with regard to existing stocks is in error as that section does not pertain to cancelled conditional registrations which are dealt

Thus, while Petitioners are correct that the applicable procedural rule, 40 C.F.R. § 164.81(a), generally broadly allows for the admissibility of evidence at hearing, such allowance is not unlimited. The evidence must still be relevant to a material issue in dispute in the proceeding. Moreover, the need to more tightly control evidence admitted at hearing is particularly significant in this case due to the extremely limited time-frame of 75 days in which the matter must proceed to– and through– administrative hearing and any appeal.[5] As such, the question of whether the Petitioners' flubendiamide pesticides have an unreasonable adverse effect on the environment is not an issue for hearing, and evidence in regard thereto is not admissible at hearing. However, Petitioners may if they wish make a written offer of proof with regard to such evidence so that it may be included into the record for the purposes of appeal.

Upon consideration of the foregoing, Respondent's Motion to Limit Scope of Testimony is hereby **GRANTED**.

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Susan L. Biro
Chief Administrative Law Judge

Dated: May 03, 2016
Washington, D.C.

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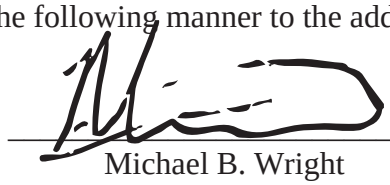
with in subsection (d) of the Policy Statement. Policy Statement, 56 Fed. Reg. at 29366–67. The applicable subsection of the Policy Statement clearly provides for no undertaking of a risk-based analysis by the Administrator with regard to disposition of existing stocks in the cases of cancellation of conditional registrations. Rather, as indicated by the Agency, it fairly unequivocally states that "the Agency does not anticipate allowing a registrant to sell or distribute existing stocks of cancelled products that were conditionally registered if the registrant fails to demonstrate compliance with any specific requirements set forth in the conditional registration." *Id.*

[5] It is noted that the legislative intent behind the narrow statement of the only two issues to be tried in this proceeding, as set forth in FIFRA section 6(e)(2), was clearly for this to be an abbreviated proceeding, not the lengthy type generally provided in regard to the cancellation of full registrations, where the unreasonable adverse effect on the environment is generally at issue. *See e.g.*, H.R. 7073 (May 16, 1977) ("We strongly believe that the Agency should be required to cancel the registration if the conditions are not met within the appropriate time interval and that any hearing on such a cancellation should be confined to whether or not the conditions were met and how existing stocks should be handled. Public resources should not be devoted to long, drawn out cancellation procedures for these types of registrations."). As such, Petitioners effort to turn it into such a proceeding where such an issue is considered is not consistent with the statute or legislative intent.

In the Matter of Bayer CropScience LP and Nichino America, Inc., Petitioners.
Docket No. FIFRA-HQ-2016-0001

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Respondent's Motion to Limit Scope of Testimony**, dated May 3, 2016, and issued by Chief Administrative Law Judge Susan L. Biro, was served on this 3rd day of May 2016 in the following manner to the addressees listed below:



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