

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

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

**INTERVENORS’ REBUTTAL PREHEARING EXCHANGE AND
PRIMARY DISCOVERY**

In accordance with the Tribunal’s June 5, 2023, Order Scheduling Hearing and Prehearing Procedures, Intervenors submit this rebuttal prehearing exchange and primary discovery.

A. and B. Witness Lists and Verified Written Statements

Intervenors do not intend to call any rebuttal witnesses at the hearing because the Tribunal’s May 22, 2023, Order Granting Motion to Intervene made it clear that challenges to the validity of Respondent Environmental Protection Agency’s (“EPA’s”) Chlorpyrifos; Tolerance Revocations Rule, 86 Fed. Reg. 48,315 (Aug. 30, 2021) (the “Final Rule”) are beyond the scope of this proceeding. If the scope of this proceeding subsequently expands to include challenges to the Final Rule, Intervenors reserve the right to seek leave to file amended prehearing exchange and primary discovery.

As explained in Intervenors’ Initial Prehearing Exchange, it is Intervenors’ legal position that once EPA revoked all chlorpyrifos tolerances, cancellation of the associated food use chlorpyrifos registrations was legally required and foreordained. Under the Food Quality Protection Act’s strictly health-based standard, an economics assessment is unwarranted and disallowed. Accordingly, Intervenors believe that the written statements submitted by representatives of Petitioner agribusiness and grower organizations (Michael Aerts, Johnnie Walter Boatright, III, Chris Butts, Neil Brodie Griffin, Luther Markwart, Peter Nelson, Ben Scholz, and Jordan Scott) are legally irrelevant. For the same reasons, Intervenors believe that portions of the written statements submitted by Petitioner Gharda Chemicals International (Ram Seethapathi, ¶¶ 6-13, and Stephanie H. Stephens, ¶¶ 7-10) are also legally irrelevant.

Petitioners have filed and served a redacted version of the written statement of Ram Seethapathi, President of Petitioner Gharda Chemicals International, Inc., and have filed an unredacted version under seal. Intervenors have asked counsel for Gharda Chemicals International to provide Intervenors with the unredacted written statement under a protective order. Respondent EPA has joined in that request. It appears that the parties will be able to agree to disclosure under a protective order. If, however, the parties are unable to work out arrangements for Intervenors to have access to the unredacted written statement, Intervenors will seek an appropriate order from the Tribunal. Further, Intervenors reserve the right to supplement their rebuttal prehearing exchange after reviewing the redacted material.

C. Intervenors’ Exhibits

In the Tribunal’s May 22, 2023, Order Granting Motion to Intervene, the Tribunal explained that challenges to the validity of the Final Rule are beyond the scope of this proceeding. Despite this, Petitioners have submitted exhibits that support their challenge to the Final Rule and their argument that EPA should have allowed the continuation of uses identified by EPA as potentially safe in Chlorpyrifos Proposed Interim Registration Review Decision (Dec. 2020) and associated EPA documents. *See* PX 38-41. To provide a complete picture, Intervenors submit the following exhibits.

First, EPA solicited public comments on the Chlorpyrifos Proposed Interim Registration Review Decision, but EPA failed to respond to those public comments. Thus, Intervenors submit their public comments as rebuttal exhibit IX 5, including exhibit 2 to Intervenors’ comments on the Chlorpyrifos Interim Registration Review Proposed Decision. IX 5 shows the serious flaws in that Proposed Decision and how the underlying human health risk assessment and drinking water assessment fail to protect children from neurodevelopmental harm from low-level exposures to chlorpyrifos.

Second, Petitioners submitted the comments provided by the U.S. Department of Agriculture on EPA’s proposed 2016 updated risk assessment related to EPA’s Final Rule revoking chlorpyrifos tolerances as PX 1. To ensure the Tribunal has a complete picture of the comments before it, Intervenors attach their comments on the updated risk assessment as IX 6.

Third, Petitioners also submitted all the briefing presented to the Eighth Circuit Court of Appeals in their challenge to the Final Rule, except for Intervenors’ Amicus Brief. While legal briefs would not ordinarily be evidence in an adjudicative proceeding, Intervenors are submitting their amicus brief to complete the picture as IX 7.

EXHIBIT	Intervenor Exhibit Number (“IX”)
Intervenors’ Comments on EPA’s 2020 Proposed Interim Registration Review Decision including the declaration of Philip J. Landrigan, M.D., in support of Intervenors Petition to Cancel and Suspend Chlorpyrifos Uses (Mar. 4, 2021)	IX 5

Intervenors' Comments on Chlorpyrifos; Tolerance Revocations; Notice of Data Availability and Request for Comment, 81 Fed. Reg. 81,049, 81,050 (Nov. 17, 2016) (submitted Jan. 17, 2017)	IX 6
Intervenors Amicus Curiae Brief in <i>Red River Valley Sugarbeet Growers Ass'n v. Regan</i> , Nos. 22-1422, 22-1530 (consolidated) (8th Cir. July 29, 2022)	IX 7

D. Matters on Which Official Notice May Be Taken

Intervenors requested that the Tribunal take official notice of records of agency proceedings in their Initial Prehearing Exchange. Intervenors have no additional requests for official notice at this time.

E. Interpretation Services

Intervenors do not plan to call any witnesses and therefore request no interpretative services.

Dated: August 4, 2023

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Intervenors' Rebuttal Prehearing Exchange and Primary Discovery**, dated August 4, 2023, was sent this day in the following manner to the addressees listed below:

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

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Dated: August 4, 2023



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