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October 6, 2009

Mr. Rick Keigwin
Director, Pesticide Re-evaluation Division
Office of Pesticide Programs
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW – Mail Code: 7508P
Washington, DC 20460

Re: Implementation of Chlorpyrifos, Diazinon and Malathion Salmonid
BiOp/Follow-Up on October 1, 2009 Meeting

Dear Mr. Keigwin:

As discussed at the October 1, 2009 meeting between EPA staff and representatives of our clients Dow AgroSciences, Makhteshim Agan of North America and Cheminova, Inc. USA, (“the registrants”), we believe the procedures to be followed in implementing the September 10, 2009 EPA response to the referenced BiOp must be confirmed and documented. We are open to the form of that documentation – exchange of letters, Memorandum of Agreement, or some alternative – but believe it would have to unambiguously address the matters described below and in the attachment. Because the registrants have not yet heard from all pertinent customers and commercial personnel, we also must reserve the right to amend that list for a reasonable period of time.

In addition to the more specific matters addressed in the attachment, the following bullets confirm and amplify several of the key conceptual points made by the registrants at the October 1 meeting:

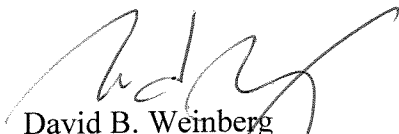
- The registrants continue to seek to work constructively with EPA in addressing the thorny and largely unprecedented issues raised by the BiOp and EPA’s response to it.
- The registrants are prepared to agree to amend pertinent registrations to cross-reference requirements of bulletins, but only if (a) adequate provision is made for handling already-produced material that bears unamended labels, and (b) the process for bulletin development is expressly defined, and in doing so confirms each registrant’s right to challenge any objectionable bulletin content *prior to publication of that content*.
- While the registrants understand it is necessary for EPA to coordinate with NMFS and USGS before moving forward to develop a protocol for the monitoring study,

the registrants believe they should be involved in that protocol development from its earliest substantive stage.

- If, notwithstanding both sides' best efforts, mutual agreement cannot be reached on certain issues, the registrants would be prepared to move forward with regard to other issues on which agreement is possible, if: (a) all issues raised in this letter and the attachment are resolved or identified as unresolved; (b) mutually-agreeable procedures for resolving remaining issues are specified; (c) there is mutual agreement to limit any proposed cancellation(s) and the resultant proceeding(s) to the remaining disputed issue(s), with the understanding, however, that the issue(s) to be addressed would include (but not necessarily be limited to) the basis for both NMFS' and EPA's rationales for their positions; and (d) in the event EPA proposes suspension of any regulation in an effort to compel one or more registrants to produce a monitoring study in accordance with a protocol that is not mutually agreeable, EPA will consent to include the appropriateness of that study protocol among the issues to be considered in the resultant hearing .

We look forward to the Agency's prompt response to our proposals for moving forward.

Sincerely,



David B. Weinberg
Counsel to Dow AgroSciences, LLC and
Makhteshim Agan of North America, Inc.



David E. Menotti
Counsel to Cheminova, Inc. USA

Key Elements of MOA of Other Documentation of Procedural Agreement Between EPA and Registrants re: Chlorpyrifos, Diazinon and Malathion NW Salmonid BiOp (hereinafter, "MOA").

1. Documentation of a process for developing and obtaining registrant approval of bulletins that provides registrant input into draft language, provides for reasonable participation by representatives of state lead pesticide agencies who will be responsible for enforcement, and assures full protection of each registrant's statutory rights. This would explicitly include EPA commitment not to include in any bulletin text, tables, figures or other content (whether directly set forth in bulletin text or referenced by some computer "application") objected to by the pertinent registrant(s) until after the registrant has exhausted its administrative hearing rights to challenge such content, and after the registrant has had an opportunity to review the code for the "application" to be employed by users seeking to access such information.
2. Identification of elements specified in EPA's September 10, 2009 letter to NMFS that are acceptable to registrants, if incorporated in bulletins that have been reviewed per item 1.
 1. As of this date, these appear to be the wind speed restriction; soil moisture/48 hour storm restriction, as tailored to address concerns of irrigated agriculture; and incident reporting provisions.
3. Provision for substantive discussion and potential reconsideration by EPA of buffer provisions specified in EPA's September 10, 2009 letter to NMFS, specifically including (a) the definition of "waters" triggering spray and/or runoff buffer requirements; (b) the limitation of runoff buffer requirements to appropriate conditions; (c) incorporation into runoff buffer determinations of alternate options for growers where 100 ft setbacks are infeasible; (d) development by EPA of a spray buffer calculation tool for the ESPP bulletin which scales directly with the target concentration (rather than implementing buffers in large steps); and (e) appropriate accommodation of public health vector control programs. In addition, a commitment by EPA to reconsider at a registrant's request any or all of these tentatively agreed to by a registrant or registrants, based on outcome of the monitoring study specified in item 6 or any equivalent work sponsored by U.S. government or registrants of any product subject to *Washington Toxics* requirements.
4. Label changes to be made by registrants within a reasonable period after resolution of points 1, 2 and 3, which could be implemented even if the procedures set forth in items 1 and 3 have not yet been completed. Provision is also needed for existing stocks authorization for product already produced/in production for the coming season along with an agreed upon future date for sale of product bearing revised labeling by registrants.
5. Registrants to be involved in discussion of, and development of, "monitoring" study. . If mutually-acceptable protocol developed, EPA to issue FIFRA Section 3(c)(2)(B) DCI

for its production; to recognize that the study, if completed in accordance with protocol, would support conclusions as to application of other products; to agree to require substantially similar study(ies) from any other registrants as to which future BiOps require salmonid-protective steps in the NW; and to notify those registrants that they could satisfy EPA requirement by buying right to cite the current registrants' study.

6. EPA agreement that any cancellation proceeding initiated because of registrant refusal to voluntarily make label changes demanded by the Agency will be limited to the specific requirements that are disputed, but will include consideration of both NMFS and EPA reasoning in support of the disputed requirements.

7. EPA agreement that in any suspension proceeding initiated because of registrant refusal to comply with a DCI requiring sponsorship of the monitoring study, EPA will consent to including the appropriateness of the specified study protocol among the issues to be considered in the resultant hearing.

8. If all other terms acceptable (and no hearing sought per items 6 or 7), EPA to obtain NMFS revision of incidental take statement so it is consistent with the requirements specified on labels and the mutually-acceptable final protocol of the "monitoring study".

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