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Bayer Crop Science versus Environmental Protection Agency: Could it go more wrong? Bayer

Crop Science versus Environmental Protection Agency: Could it Have Gone More wrong?

Student Name

Texas Tech University

## BCS VS EPA

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### Bayer Crop Science versus Environmental Protection Agency: Could it go more wrong? Bayer Crop Science versus Environmental Protection Agency: Could it Have Gone More wrong?

Do two wrongs ever make a right? In this case, there were multiple wrongs on both sides of the issue. Bayer Crop Science, a branch of a very successful and well-known German pharmaceutical and chemical company, Bayer, sold a controversial and potentially harmful product, flubendiamide, for almost nine years without the slightest feeling of guilt towards what they were potentially doing to the environment. In contrast, the United States Environmental Protection Agency, failed to impose actual condemning regulations on the product. Why was this scandal able to go on for almost nine years without any justice and what were the effects on the American farmer? OR Bayer and the EPA failed to serve justice to the environment and American farmer in a timely manner.

#### Overview

On July 26, 2008, the Environmental Protection Agency (EPA) granted Bayer “conditional registration” of their pesticide flubendiamide. The EPA only granted a conditional registration because of their concerns that flubendiamide seeps could seep into the soil and causes harm to aquatic invertebrates. Under the conditional approval, Bayer could go still sell their product, but the company had five years to show that the positive effects of this product outweighed the negatives. If they failed to do that, the EPA would enforce that Bayer had to voluntarily cancel their use of flubendiamide. Seven and a half years later on; January 29, 2016, the EPA decided to finally follow up on this issue and delivered a letter to Bayer stating that they had until; February 5, 2016, to voluntarily cancel all of their products containing flubendiamide. In response to this, on February 5<sup>th</sup>, Bayer stated that they were going to seek a review of the product’s registration in an administrative law hearing. This meant that yet again flubendiamide

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was able to stay on the shelves ~~and while~~ more research was ~~going to be~~ conducted, but now the burden of that research was put on the EPA. This caused much controversy and a hearing before the EPA's Environmental Appeals Board. In the end, Bayer gave up the fight and decided to discontinue flubendiamide. Could this have been solved in a timelier manner by stricter government regulations and/or more compliance on Bayer's part?

### Bayer's Faults

~~Bayer has a huge influence on the agriculture industry all over the globe. This~~ The problem with flubendiamide is not the first time ~~they Bayer has~~ have run into issues with the EPA, and they certainly knew how to buy themselves time to try and prove their product's innocence, all the while still being able to sell it. As a pesticide and insecticide distributor, Bayer is responsible for knowing the effects that their products could potentially have on the environment ~~and making sure that they do not impose a harmful consequence on the Earth.~~ ~~However,~~ on the other hand, Bayer is also a business with a profit maximization mindset. ~~It~~ In this situation, it seems as though Bayer was mainly concerned about making money, rather than thinking about the harmful effects the product they were selling could have on the environment. If Bayer truly believed that their product was not harmful to the environment, why did they not conduct enough of their own research to prove the EPA wrong? Charlotte Sanson, a Bayer employee stated in an interview with AgFax, <sup>22</sup>

We were driven by the belief that EPA had acted unlawfully and without scientific justification. Specifically, we believed that EPA should not be permitted to force a cancellation through a streamlined process devoid of a public discussion of scientific findings and benefits of the product, and that EPA's conduct presented a dangerous precedent for the industry.<sup>22</sup>

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~~This was in reference to their time under review by the Environmental Appeals Board. It~~ Looking at this evidence from a Bayer employee, it seems as though Bayer was more concerned with the

process of how their product was revoked of its registration rather than why it was cancelled.

Bayer acted as a child and did not step up to the plate and prove themselves, ~~but and~~ instead,

“talked back” to the EPA and EAB arguing against how they were being regulated. There are

~~multiply multiple~~ different ways that Bayer Crop Science could have gone about handling the entire situation, and ~~the company~~ could possibly still be selling flubendiamide had they changed their approach.

### EPA's Faults

On the other hand, the Environmental Protection Agency could have changed their approach to the situation as well. The topic of “conditional registrations” in general is a very controversial behavior of the EPA. Conditional registrations are a good idea in theory; however, after a review from the Government Accountability Office, the office that is responsible for making sure that the government is working efficiently, the GAO discovered that the EPA doesn't have an efficient system for recalling ~~which~~ products ~~to which~~ they issued a conditional registration ~~to~~. The EPA's database also does not have an option to change registrations from conditional to unconditional if all requirements are met. Along with that the EPA has misused the term and applied it to many products that might have just needed a label change, for example. Finally, the EPA doesn't have a reliable system to keep track of key information related to conditional registrations such as whether companies have submitted additional data within the required time frame. ~~((O)) On top of that, the~~ The Center for Food Safety also expressed their concerns about conditional registrations during the Bayer vs. EPA scandal. Peter T. Jenkins, an attorney for CFS, stated that this situation, “Provides a strong demonstration that the current

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conditional registration system is unreliable and unable to protect Americans or the environment.”

On top of the problems with conditional registrations in general, the EPA ~~had a few more things they could have handled better~~ had issues with how it handled this particular case. The EPA gave Bayer a year and a half longer than they were supposed to ~~have~~ before requesting any additional information, which allowed Bayer to keep selling flubendiamide even longer ~~than the conditional registration should have allowed~~. Also, they didn't give Bayer an actual ultimatum when they gave them the option to “voluntarily remove” flubendiamide. If the EPA was more organized and had they given stricter consequences, the outcome could have been completely different.

### Effects on the American Farmer

Agriculture is a staple industry in America. However, that does not mean that it is easy. Farmers are constantly having to adapt their farming techniques in order to stay ahead of insect's immunity to pesticides and insecticides, all the while remaining environmentally friendly. Uncontrollable variables are ever-present in the farming industry. One variable that many American farmers had depended upon since 2008 was the availability of an effective pesticide, particularly, flubendiamide. This pesticide was very widely used on over 200 crops and for multiple pests. Guz Lorenz, an entomologist at the University of Arkansas, commented ~~on~~ ~~how that~~ the removal of this product ~~is affecting farmers~~, “It is just one less bullet growers have to get pests under control. Less competition is not beneficial. It means the price goes up on other products. It's getting so difficult for our growers to be **profitable**.” Because of the actions of the EPA and Bayer, flubendiamide, which might or might not be harmful to the environment, has been discontinued, causing a monopoly on other pesticides of its kind that do not work as well. If

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this situation was had been handled differently, the American farmer might not be facing these challenges.

This controversy over flubendiamide is definitely a turning point for both Bayer and the EPA. This controversy-issue brought the EPA's lack of organization on the topic of conditional registration to the light. Along with that, Bayer lost one of their most widely used products. The EPA and Bayer Crop Science used the regulation process to avoid engaging in meaningful conversation and research. Both parties were wrong in the way they handled the situation and that shows in the effects that it has had on the American farmer.

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