



Graves Garrett LLC

J. Benton Hurst
Phone: (816) 256-3181
Fax: (816) 256-5988
bhurst@gravesgarrett.com

Garrett W. Hunkins
Phone: (816) 256-3181
Fax: (816) 256-5958
ghunkins@gravesgarrett.com

FREEDOM OF INFORMATION ACT APPEAL

July 3, 2018

Via E-Mail and U.S. Mail

Freedom of Information Officer
National Freedom of Information Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W. (2822T)
Washington, DC 20460
hq.foia@epa.gov

RE: Appeal of Freedom of Information Act Requests – EPA-HQ-2018-002024

Dear Freedom of Information Officer,

This letter is in reference to Graves Garrett LLC's ("Graves Garrett" or "the Firm") Freedom of Information Act ("FOIA") Requests to the U.S. Environmental Protection Agency (the "EPA" or "agency"). On November 20, 2017, Graves Garrett submitted 40 FOIA Requests to the EPA requesting that the EPA produce certain communications related to the EPA's decision on glyphosate. On November 22, 2017, Graves Garrett submitted an additional request for communications also related to the agency's decision on glyphosate. Upon receiving Graves Garrett's FOIA requests, the EPA assigned these requests various tracking numbers.¹ The Firm's 41 requests (the "Glyphosate Requests") were eventually combined by the agency and processed simultaneously. The EPA assigned the Glyphosate Requests EPA tracking number EPA-HQ-2018-0002024. The agency first produced documents responsive the Glyphosate Request on May 10, 2018. The EPA produced additional documents on June 11, 2018, along with the agency's Final Response letter, which is attached as **Exhibit A**.

¹ Graves Garrett has provided an Index on page 6 of this letter that lists all the requests which are subject to this FOIA Appeal.

EXHIBIT

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Graves Garrett appeals the agency's withholding of documents without justification, as evidenced by non-sequential Bates numbering in the documents produced; the agency's refusal or otherwise failure to establish any means for determining which documents are responsive to each individual request or custodian, creating adequacy of search issues; the agency's improper redactions; and the agency's failure to search for and produce text and instant messages.

I. Wrongful Withholding

First, Graves Garrett appeals the EPA's failure to produce documents absent justification under FOIA. *See* 5 U.S.C. § 552(b) (listing FOIA Exemptions). In total, the EPA produced 4,888 pages of documents responsive to the Glyphosate Requests. After a cursory review of those documents, Graves Garrett quickly noticed that the Bates numbers for these documents, stamped on the bottom right-hand corner of each page, are not sequential. *See, e.g., Exhibit B* (in this instance the agency's production is missing six pages, i.e., it does not contain pages Bates numbered EPA-HQ-2018-002024_0000002-7); *Exhibit C* (the agency's production is missing 46 pages, i.e., it does not contain pages Bates numbered EPA-HQ-2018-002024_00000030-75); *Exhibit D* (in yet another example, the agency failed to produce 31 pages, i.e., the agency's production does not contain pages Bates numbered EPA-HQ-2018-002024_0001071-1101). In addition to the instances cited, there are several other examples of wrongful withholding in the EPA's production. This suggests that the agency has withheld certain pages without citing any FOIA exemption under 5 U.S.C. § 552(b). Graves Garrett appeals the agency's wrongful withholding of documents.

II. Problems with Aggregated Production

Graves Garrett appeals the EPA's decision to combine the responsive documents without identifying which of the Firm's requests produced each document. Graves Garrett submitted 41 unique requests for information related to certain individuals. *See* Index. Furthermore, although the Glyphosate Requests were all related in that they requested documents containing, among other things, the term "glyphosate," each request was unique in that it sought documents related to a specific individual. *See id.* For each request, Graves Garrett supplied a set of search terms outlining the documents it sought. Nevertheless, the EPA combined the Glyphosate Requests into a single review under EPA tracking number EPA-HQ-2018-0002024.



While Graves Garrett understands that combining the requests produced certain efficiencies in review, Graves Garrett objects to and appeals the manner in which responsive documents were ultimately produced. The EPA produced all responsive documents in two batches, combining documents which would otherwise only be responsive to each unique request made by the Firm. This practice has caused confusion in the Firm's review of the documents. Without knowing which requests produced which documents—or no documents—there is no indication whether the searches performed by the agency were adequate, whether the EPA searched for every individual name as provided, whether it unreasonably limited its search to certain custodial accounts, and what documents were withheld from which requests, among other issues. Graves Garrett asserts that the EPA's aggregated production has unreasonably obscured potential issues with the search accordingly appeals the agency's action.

III. **Improper Redactions**

Graves Garrett next appeals the EPA's decision to redact portions of the responsive documents. EPA redacted various portions of the 4,888 pages based on claims that the documents satisfied 5 U.S.C. § 552(b).

On information and belief, some of these redactions are unwarranted. Graves Garrett appeals the agency's decision to redact this information.

IV. **EPA Failed to Search for Text and Instant Messages**

Lastly, Graves Garrett requested text and instant message correspondence. The agency produced no text or instant correspondence, yet did not assert that no responsive correspondence exists. Graves Garrett appeals the agency's failure to search for and produce responsive text and instant messages.



Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'BH', is positioned below the word 'Sincerely,'.

Ben Hurst
Graves Garrett LLC



Index

Custodian	GG Tracking Number	EPA Tracking Number
Tom Burke	GG0040	EPA-HQ-2018-001976
Jim Jones	GG0041	EPA-HQ-2018-001977
Jack Housenger	GG0042	EPA-HQ-2018-001978
Peter Egeghy	GG0044	EPA-HQ-2018-001981
Lynn Flowers	GG0045	EPA-HQ-2018-001984
William Jordan	GG0046	EPA-HQ-2018-001986
David Miller	GG0047	EPA-HQ-2018-001986
Ray Kent	GG0048	EPA-HQ-2018-001988
Lori Brunsman	GG0049	EPA-HQ-2018-001989
Aruna Shah	GG0050	EPA-HQ-2018-001990
Jenny Tao	GG0051	EPA-HQ-2018-001991
Christopher Schlosser	GG0052	EPA-HQ-2018-001993
Danelle Lobdell	GG0053	EPA-HQ-2018-001994
Charles Wood	GG0054	EPA-HQ-2018-001995
Jessica Kidwell	GG0055	EPA-HQ-2018-001996
John Liccione	GG0056	EPA-HQ-2018-001997
Karlyn Middleton	GG0057	EPA-HQ-2018-001998
Nancy McCarroll	GG0058	EPA-HQ-2018-001999
Gregory Akerman	GG0059	EPA-HQ-2018-002000
Charles Smith	GG0060	EPA-HQ-2018-002001
Anwar Dunbar	GG0061	EPA-HQ-2018-002002
P.V. Shah	GG0062	EPA-HQ-2018-002003
Jess Rowland	GG0063	EPA-HQ-2018-002004
Jackie McQueen	GG0064	EPA-HQ-2018-002005
Linda Strauss	GG0065	EPA-HQ-2018-002006
Norman Birchfield	GG0066	EPA-HQ-2018-002007
Richard Keigwin	GG0067	EPA-HQ-2018-002008
Steven Knott	GG0068	EPA-HQ-2018-002009
Vincent Cogliano	GG0069	EPA-HQ-2018-002010
Dana Vogel	GG0070	EPA-HQ-2018-002011
Kenneth Olden	GG0071	EPA-HQ-2018-002012
Kevin Crofton	GG0072	EPA-HQ-2018-002013



Louise Wise	GG0073	EPA-HQ-2018-002015
Michael Goodis	GG0074	EPA-HQ-2018-002016
Neil Anderson	GG0075	EPA-HQ-2018-002017
Tina Bahadori	GG0076	EPA-HQ-2018-002018
Nick Conger	GG0077	EPA-HQ-2018-002019
Stan Barone	GG0078	EPA-HQ-2018-002020
Alan Margolis	GG0079	EPA-HQ-2018-002021
Matthew Ross	GG0080	EPA-HQ-2018-002022
Matthew Ross, et al.	GG0082	EPA-HQ-2018-002024



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
CHEMICAL SAFETY AND
POLLUTION PREVENTION

June 11, 2018

John B. Hurst
Graves Garrett LLC
1100 Main St.
Ste. 2700
Kansas City, MO 64105

Re: Freedom of Information Act: EPA-HQ-2018-002024/**Final Response**

Dear Mr. Hurst:

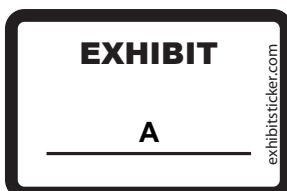
This is our final response to your inquiry to the Freedom of Information Office in the Environmental Protection Agency's (EPA) Office of Pesticide Programs (OPP) for your various requests related to glyphosate.

1. All correspondence (including attachments)

a. Sent to or from (including also copying, whether as cc: or bcc:), Tom Burke, Jim Jones, Jack Housenger, Matthew T. Martin, Peter Egeghy, Lynn Flowers, William Jordan, David Miller, Ray Kent, Lori Brunsman, Aruna Shah, Jenny Tao, Christopher Schlosser, Danelle Lobdell, Charles Wood, Jessica Kidwell, John Liccione, Karlyn Middleton, Nancy McCarroll, Gregory Akerman, Charles Smith, Anwar Dunbar, P.V. Shah, Jess Rowland, Jackie McQueen, Linda Strauss, Norman Birchfield, Richard Keigwin, Steven Knott, Vincent Cogliano, Dana Vocel, Kenneth Olden, Kevin Crofton, Louise Wise, Michael Goodis, Neil Anderson, Tina Bahadori, Nick Conger, Stan Barone, Alan Margolis, AND/OR Matthew Ross containing the following search terms, including in the subject and/or body of the email; and

b. Which include anywhere in the correspondence, whether the body, the Subject, To:, From:, cc:, or bcc: fields: "glyphosate," "gly," "IARC," "round up," "Roundup," "CARC," "Christopher Portier," "Ramazzini," AND/OR "Guyton."

2. All text or instant message correspondence (entire threads) to or from Tom Burke, Jim Jones, Jack Housenger, Matthew T. Martin, Peter Egeghy, Lynn Flowers, William Jordan, David Miller, Ray Kent, Lori Brunsman, Aruna Shah, Jenny Tao, Christopher Schlosser, Danelle Lobdell, Charles Wood, Jessica Kidwell, John Liccione, Karlyn Middleton, Nancy McCarroll, Gregory Akerman, Charles Smith, Anwar Dunbar, P.V. Shah, Jess Rowland, Jackie McQueen, Linda Strauss, Norman Birchfield, Richard Keigwin, Steven Knott, Vincent Cogliano, Dana Vocel, Kenneth Olden, Kevin Crofton, Louise Wise, Michael Goodis, Neil Anderson, Tina Bahadori, Nick Conger, Stan Barone, Alan Margolis, AND/OR Matthew Ross mentioning or including any of the following terms in the subject line or body of the message/correspondence: "glyphosate," "gly," "IARC," "round up," "Roundup," "CARC," "Christopher Portier," "Ramazzini," AND/OR "Guyton."



The remaining requested records are available by going to the "View Records" link in the email or you may go to <https://foiaonline.regulations.gov/foia/action/public/home> and search by the FOIA request number. Also enclosed, is an invoice in the amount of \$313.50

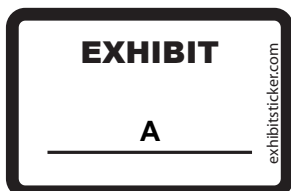
This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (301) 837-1996 or (877) 684-6448; or fax, (301) 837-0348.

If you have any questions, please contact me on 703-305-5456 (8:00 a.m. to 5:30 p.m.) or email me at ingram.earl@epa.gov. Refer to the request number when contacting me.

Sincerely,

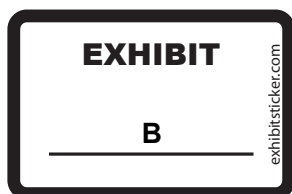


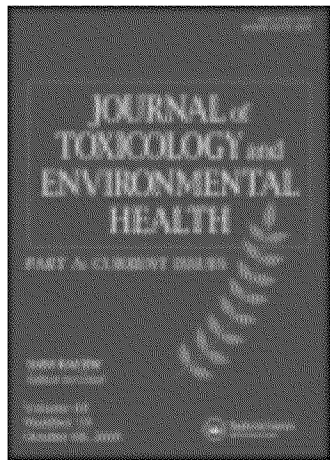
Earl Ingram, Chief
Public Information and Records Integrity Branch
Information Technology and Resources Management Division
Office of Pesticide Programs



From: Lowit, Anna
Importance: Normal
Subject: In vitro damage assays
Start Date/Time: Wed 8/17/2016 6:30:00 PM
End Date/Time: Wed 8/17/2016 7:00:00 PM
[Alvarez Moya et al, 2014.pdf](#)
[bolognesi 1997.pdf](#)
[Koller VJ et al 2012 glyphosate hu buccal cells.pdf](#)
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Biomonitoring of Genotoxic Risk in Agricultural Workers from Five Colombian Regions: Association to Occupational Exposure to Glyphosate

C. Bolognesi^a, G. Carrasquilla^b, S. Volpi^a, K. R. Solomon^c & E. J. P. Marshall^d

^a Environmental Carcinogenesis Unit, Department of Epidemiology and Prevention, National Cancer Research Institute, Genoa, Italy

^b Facultad de Salud, Universidad del Valle, Cali, Colombia

^c Centre for Toxicology and Department of Environmental Biology, University of Guelph, Guelph, Ontario, Canada

^d Marshall Agroecology Limited, Barton, Winscombe, Somerset, United Kingdom

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EXHIBIT

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Biomonitoring of Genotoxic Risk in Agricultural Workers from Five Colombian Regions: Association to Occupational Exposure to Glyphosate

C. Bolognesi¹, G. Carrasquilla², S. Volpi¹, K. R. Solomon³, and E. J. P. Marshall⁴

¹Environmental Carcinogenesis Unit, Department of Epidemiology and Prevention, National Cancer Research Institute, Genoa, Italy, ²Facultad de Salud, Universidad del Valle, Cali, Colombia, ³Centre for Toxicology and Department of Environmental Biology, University of Guelph, Guelph, Ontario, Canada, and ⁴Marshall Agroecology Limited, Barton, Winscombe, Somerset, United Kingdom

In order to assess possible human effects associated with glyphosate formulations used in the Colombian aerial spray program for control of illicit crops, a cytogenetic biomonitoring study was carried out in subjects from five Colombian regions, characterized by different exposure to glyphosate and other pesticides. Women of reproductive age (137 persons 15–49 yr old) and their spouses (137 persons) were interviewed to obtain data on current health status, history, lifestyle, including past and current occupational exposure to pesticides, and factors including those known to be associated with increased frequency of micronuclei (MN). In regions where glyphosate was being sprayed, blood samples were taken prior to spraying (indicative of baseline exposure), 5 d after spraying, and 4 mo after spraying. Lymphocytes were cultured and a cytokinesis-block micronucleus cytome assay was applied to evaluate chromosomal damage and cytotoxicity. Compared with Santa Marta, where organic coffee is grown without pesticides, the baseline frequency of binucleated cells with micronuclei (BNMN) was significantly greater in subjects from the other four regions. The highest frequency of BNMN was in Boyacá, where no aerial eradication spraying of glyphosate was conducted, and in Valle del Cauca, where glyphosate was used for maturation of sugar cane. Region, gender, and older age (³⁵ yr) were the only variables associated with the frequency of BNMN measured before spraying. A significant increase in frequency of BNMN between first and second sampling was observed in Nariño, Putumayo, and Valle immediately (<5 d) after spraying. In the post-spray sample, those who reported

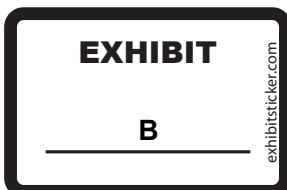
direct contact with the eradication spray showed a higher quantitative frequency of BNMN compared to those without glyphosate exposure. The increase in frequency of BNMN observed immediately after the glyphosate spraying was not consistent with the rates of application used in the regions and there was no association between self-reported direct contact with eradication sprays and frequency of BNMN. Four months after spraying, a statistically significant decrease in the mean frequency of BNMN compared with the second sampling was observed in Nariño, but not in Putumayo and Valle del Cauca. Overall, data suggest that genotoxic damage associated with glyphosate spraying for control of illicit crops as evidenced by MN test is small and appears to be transient. Evidence indicates that the genotoxic risk potentially associated with exposure to glyphosate in the areas where the herbicide is applied for coca and poppy eradication is low.

Glyphosate (*N*-phosphonomethyl glycine), a nonselective herbicide, is the active ingredient of a number of herbicide formulations and one of the most widely used pesticides on a global basis (Baylis, 2000; Woodburn, 2000; Duke & Powles, 2008). It is a postemergence herbicide, effective for the control of annual, biennial, and perennial species of grasses, sedges, and broadleaf weeds. The relatively high water solubility and the ionic nature of glyphosate retard penetration through plant hydrophobic cuticular waxes. For this reason, glyphosate is commonly formulated with surfactants that decrease the surface tension of the solution and increase penetration into the tissues of plants (World Health Organization International Program on Chemical Safety, 1994; Giesy et al., 2000).

A large number of glyphosate-based formulations are registered in more than 100 countries and are available under different brand names. One of the most commonly applied glyphosate-based products is Roundup, containing glyphosate as the active ingredient (AI) and polyethoxylated tallowamine

©General Secretariat of the Organization of American States, 2009. This paper was prepared as part of a Study entitled “Production of Illicit Drugs, the Environment and Human Health,” financed with contributions from the Governments of Colombia and the United States of America. The conclusions and opinions expressed herein are those of the authors and not necessarily those of the Organization of American States and its General Secretariat, which as of the date of this copyright, have not formulated any opinion with respect to them.

Address correspondence to K. R. Solomon, Centre for Toxicology and Department of Environmental Biology, University of Guelph, Guelph, ON, N1G 2W1, Canada. E-mail: ksolomon@uoguelph.ca



strongly on the experimental system and on the type of indicator cells used.

The findings of the present study suggest that buccal epithelial cells are more sensitive toward the cytotoxic and DNA-damaging effects of G and R than cells from the hematopoietic system. The R formulation that we tested contains 450 g/l of G and should be diluted according to the instructions of the manufacturer to 1–3% before use (final concentration 4,500–13,500 mg/l). The fact that we found significant acute and genotoxic effects at levels between 10 and 20 mg/l after 20 min indicates that short contact with a 225–1,350-fold dilution of the spraying solution may cause adverse effects in cells from the oral cavity (and possibly also in other respiratory epithelia). In this context, it is notable that the experiments of Benachour et al. (2007) showed that the cytotoxic effects of G and several formulations increase strongly as a function of the exposure time, and further experiments are under way to study the dose and time kinetics of the herbicide in more detail in epithelial cells.

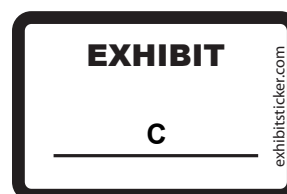
It has been shown by Bonassi et al. (2011) that increased MNI frequencies in lymphocytes are valid biomarkers for cancer risks in humans, and it is notable that a number of studies have been published in the last years, which indicate that correlations exist between exposure to G and elevated cancer incidences in humans (De Roos et al. 2005, 2003; Eriksson et al. 2008; Hardell and Eriksson 1999; Hardell et al. 2002; McDuffie et al. 2001). Our findings support the assumption of a possible association between G exposure and increased cancer risks and underline the importance of further human studies for example of MNI experiments with exfoliated buccal cells from agricultural workers and laborers that are exposed in factories. At present, no such data are available and estimates of inhalative exposure due to spraying, which are mentioned in the review of Williams et al. (2000), are vague and have not been published in scientific journals. It is known that more than 90% of all human cancers are of epithelial origin (Cairns 1975). Therefore, the present observation of induction of DNA damage under conditions that are relevant for humans in epithelial cells derived from the oral cavity should be taken as an indication for potential adverse effects.

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From: Knott, Steven
Location: Potomac Yard South, Room 12100
Importance: Normal
Subject: FIFRA SAP Management Review Meeting in Preparation for the October 18-21, 2016
FIFRA SAP Reviewing the EPA's Evaluation of the Carcinogenic Potential of Glyphosate
Start Date/Time: Tue 8/30/2016 5:00:00 PM
End Date/Time: Tue 8/30/2016 8:00:00 PM
[DRAFT SAP white paper OCSP management review.docx](#)
[glyphosate draft SAP charge questions OCSP management review.docx](#)
[Final Agenda Management Review Meeting for October FIFRA SAP.docx](#)

Final Agenda:

Draft Documents:



To: Akerman, Gregory[Akerman.Gregory@epa.gov]
From: Perron, Monique
Sent: Wed 8/31/2016 9:45:02 PM
Subject: check MRIDs
DRAFT SAP white paper_OCSPP management review.docx
MRID references 8.31.16.docx

Ex. 5 - Deliberative Process

If you could go through these files and look at what I added in track changes, that would be great. I believe the rest are literature studies (including the studies that we rely on the review article) that Connie will pick up in her search of the document for references, but you'll know better whether something is in house or a lit study.

When you're done, please send the whitepaper file back to me so I can make sure I have the most recent file with the additional notes I added for updating/editing. If the MRID list is good, then we can forward along to Earl Ingrams and start the transmittal memo for S.Knott.

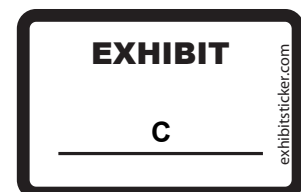
Thanks!

Monique

~~~~~  
Monique Perron

U.S. Environmental Protection Agency

Office of Pesticide Programs | Health Effects Division



Available data from epidemiological, animal carcinogenicity, and genotoxicity studies were reviewed and evaluated for study quality and results to inform the human carcinogenic potential of glyphosate. Additionally, as described in the draft "Framework for Incorporating Human Epidemiological & Incident Data in Health Risk Assessment," the multiple lines of evidence were integrated in a weight-of-evidence analysis using the modified Bradford Hill Criteria considering concepts, such as strength, consistency, dose response, temporal concordance, and biological plausibility. The agency will solicit advice from the SAP on the evaluation and interpretation of the available data for each line of evidence and the weight-of-evidence analysis, as well as how the available data inform cancer classification descriptors according to the agency's 2005 Guidelines for Carcinogen Risk Assessment"

mention of:

#### Effect on Cellular Processes

Benachour, N. and G.-E. Seralini (2009). "Glyphosate Formulations Induce Apoptosis and Necrosis in Human Umbilical, Embryonic, and Placental Cells." *Chem Res Toxicol* 22(1): 97-105.

and:

Page 176

Not Relevant to current fit for purpose review

Mesnage, R., et al. (2013). "Ethoxylated adjuvants of glyphosate-based herbicides are active principles of human cell toxicity." *Toxicology* 313(2-3): 122-128.

However, vide the statement at page 186:

#### Retracted Article

Séralini, G.-E., et al. (2014). "Retraction notice to "Long term toxicity of a Roundup herbicide and a Roundup-tolerant genetically modified maize" [*Food Chem. Toxicol.* 50 (2012) 4221–4231]." *Food and Chemical Toxicology* 63: 244.

and mention at page 158 of:

#### Correspondence article

Wallace Hayes, A. (2014). "Editor in Chief of Food and Chemical Toxicology answers questions on retraction." *Food and Chemical Toxicology* 65: 394-395.

I would respectfully point out that the subject paper was in fact republished and hence remains extant.

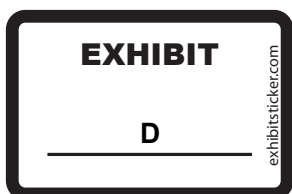
I attach a copy for your further information and trust the EPA will ensure this unfortunate oversight is immediately addressed.

Kind Regards

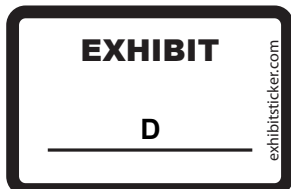




Ian Panton



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