



June 9, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania, NW
Mail Code 1101A
Washington, D.C. 20460
Sent via electronic mail

RE: Ninth Circuit Vacatur of dicamba labels

Dear Administrator Wheeler:

I am writing to express our appreciation to the Agency for quickly issuing guidance related to the Ninth Circuit vacatur of labels for FeXapan, Xtendimax and Engenia herbicides. We understand that this was a difficult and disruptive decision handed down at the worst possible time, and that EPA needed to weigh many different factors in formulating its June 8 Order.

In particular, we acknowledge and appreciate the efforts to address the needs of commercial applicators and the farmers they serve by allowing continued applications for product in their possession. Restricting sales of product that is already in distribution has serious implications for distributors and retailers who are not registrants but have made substantial product purchase decisions based on expected sales of labeled product. Most seriously impacted are growers who banked on that product being available, invested in seed and a system to utilize it, and have now had the rug pulled out from under them by an unbelievably untimely court decision.

The Order does leave some important questions unanswered, and we have submitted a couple of them to the Office of Pesticide Programs in hopes of achieving more clarity. With only about two weeks remaining in the application season, urgent answers to these questions would be most helpful:

- 1) If the retailer has a commercial applicator business, can that commercial applicator apply product that was in the retail warehouse as of June 3, 2020?
- 2) If the retailer has inventory in stock that had been purchased by a grower prior to June 3, 2020, but not yet delivered, can that product be applied by a commercial applicator? The order appears to prohibit delivery of that product to the purchasing grower, unless EPA considers possession equal to ownership.

We are aware that the plaintiffs in the case have requested an emergency ruling to quash EPA's Order. This fact, in addition to the factors mentioned in our earlier letter, seem to argue in favor of EPA appealing the case to the Supreme Court to obtain an emergency stay. Nobody benefits

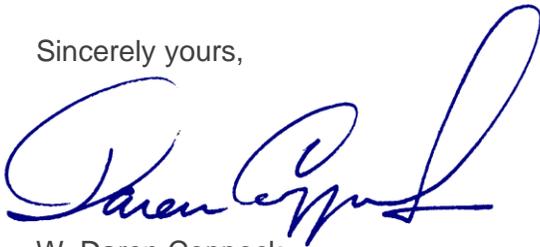
The Honorable Andrew Wheeler
June 9, 2020
Page 2 of 2

from the chaos this has created and the best path forward is to have an orderly conclusion to the 2020 season and then make decisions about the future status of these products.

For future uses, including the 2021 registration decisions for these products, we respectfully request that the Agency render its decision as early as possible. Growers, retailers and manufacturers must plan ahead to produce and position the products growers will need, and if EPA decides not to re-register the product, early advance notice will be essential in providing alternatives.

We stand ready to provide any assistance you may require.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "W. Daren Coppock". The signature is fluid and cursive, with a large loop at the end.

W. Daren Coppock
President & CEO