

February 8, 2024

The Honorable Michael Regan  
Administrator  
US Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Mail Code 1101A  
Washington, DC 20460

RE: Vacatur of registrations for Over the Top (OTT) applications of dicamba herbicide  
*Center for Biological Diversity v. EPA, No. CV-20-00555-TUC-DCB*

Dear Administrator Regan,

On Tuesday a federal District Court in Arizona vacated the registration for over-the-top (OTT) applications of dicamba on dicamba-tolerant soybeans and cotton. OTT dicamba products Xtendimax (Bayer), Engenia (BASF) and Tavium (Syngenta) were all included in the decision which is national in scope.

ARA disagrees with this decision. It removes a determination that should be made by a science-based regulatory agency to a federal court which lacks that expertise, and the timing of the decision will be extremely disruptive to ag retailers, distributors, manufacturers, and farmers who made plans to use dicamba in 2024. Farmers have already made their decisions about what varieties of cotton and soybean seed they want to plant in 2024, and retailers are already stocking not only the seed but also the herbicides these growers will need for their systems. This court decision, issued after those plans have been made and while retailers are procuring the products necessary to fulfill them, comes at the worst possible time in the season.

ARA hereby requests that EPA take the following actions:

1. Appeal the federal court decision in Arizona and request an immediate stay of the order pending appeal;
2. Issue Final Cancellation orders that allow product within the channels of trade that have been manufactured and ready for sale on the date of the decision to be distributed, sold, and used under an existing stocks directive, including any manufactured product still at a registrant's facilities. In determining what existing stocks provision is appropriate with respect to a pesticide whose registration has been cancelled, under the Agency's Existing

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Stocks policy<sup>1</sup> it historically has based its determination on the total circumstances affecting the cancelled registration.

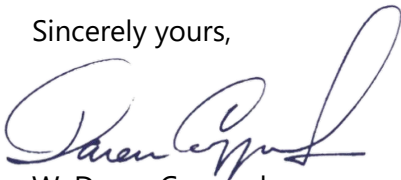
3. Issue an Emergency Use Label if there are known product shortages and no alternative products available to meet the needs for the 2024 season.

When allowing for existing stocks to be sold and used following a cancelled registration, the Agency may consider the short-term problems in switching to alternatives, including the length of time before which such alternatives could be available to retailers and users and any hardships that might be presented to users before alternatives are available. The consideration of benefits may also include the type of analysis of benefits that EPA performs in its other risk/benefit analyses (i.e., whether alternatives are available, how any such alternatives compare in terms of cost and efficacy, and what the economic effects to the user will be if the cancelled product is unavailable). The agency can also consider the dollar amount users and others have already spent on existing stocks (which would be lost if distribution, sale, or use were not permitted).

Since this federal court decision has been issued just before the busy spring planting season where seed and pesticide purchasing decisions have already been made, EPA must implement as broad of an existing stocks policy as possible including product that has already been manufactured and ready for sale by the registrants for distribution, sale, and use throughout the distribution channels of trade as of the date of the cancellation order. Stopping short of those provisions will create unnecessary chaos and economic harm to agricultural retailers, distributors, and the farmers they serve. ARA stands ready to work with you and other senior agency officials to minimize adverse impacts arising from the decision and its timing.

Thank you for your review and consideration of these requests.

Sincerely yours,



W. Daren Coppock  
President & CEO

Cc: The Honorable Tom Vilsack, Secretary of Agriculture  
The Honorable Michal Freedhoff, Assistant Administrator, EPA Office of Chemical Safety and Pollution Prevention (OCSP)  
The Honorable Ed Messina, Director, EPA Office of Pesticide Programs (OPP)

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<sup>1</sup> [https://19january2021snapshot.epa.gov/pesticide-labels/policy-existing-stocks-pesticide-products\\_.html](https://19january2021snapshot.epa.gov/pesticide-labels/policy-existing-stocks-pesticide-products_.html)