



June 5, 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 Vacature of dicamba labels

Dear Administrator Wheeler:

I am sure you are aware of the the June 3, 2020 decision by the United States Court of Appeals for the Ninth Circuit to immediately vacate the registration of three dicamba products (Xtendimax, Engenia and FeXapan) during the height of the application season. This unprecedented action by the Court will cause severe economic damage to the nation's agricultural retailers and their farmer customers. On behalf of our retailer and distributor members, the Agricultural Retailers Association (ARA) strongly urges the U.S. Environmental Protection Agency (EPA) to immediately appeal this federal court ruling using all legal avenues available to obtain a Stay of this overreaching court order and to apply longstanding "existing stocks" procedures to the cancellation.

The immediate nature of the decision and mandate has already created chaos in our industry. No apparent thought or concern was given to practical supply chain realities or availability of alternative products at the last minute. The Court made no estimate of the damage and cost that would be inflicted on growers' ability to control weeds, the investments they had already made to that end, production plans of manufacturers to prepare for that demand, or the cost and inventory impacts to agricultural retailers and distributors.

Many farmers had made plans to use over-the-top (OTT) application of dicamba to control post-emergent weeds, so manufacturers planned accordingly, and retailers stocked inventory in preparation for those applications. Growers invested in seed that is dicamba tolerant as part of this system. Now the retailers are stuck with warehouses of unusable product and there will likely not be sufficient supplies of alternate products available. Growers are now without options at the worst possible time in their production year. Those alternatives may not have even been manufactured, and what supply does exist is certainly not positioned in the supply chain for immediate use.

EPA has long-established procedures for cancelation orders to avoid the chaos we will see and are seeing from this decision. If the Court's emergency declaration supersedes EPA's cancellation procedure, a significant amount of this year's dicamba supply will be subject to the

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order and will have to be returned to the manufacturer. Retailers and growers will be scrambling to secure alternatives from insufficient supplies which will result in higher prices and even possible hoarding. And all of this is occurring during the severely restricted application window provided by the label. While the Court's decision has everyone's hands tied looking for guidance, the application clock is ticking.

EPA's typical provisions relating to "existing stocks" provide an orderly exit procedure. Our members make every effort to ensure compliance with the labels. If the standard existing stocks procedure is not available, the Agency and state regulators should expect an avalanche of Section 18 emergency requests for OTT use to control stubborn weeds that are best controlled by dicamba.

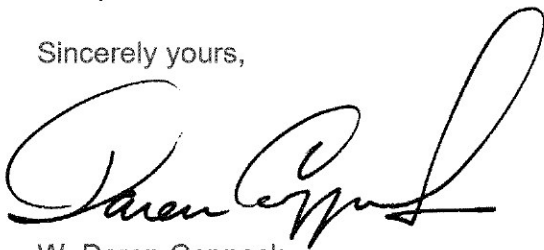
We respectfully ask your consideration of these actions:

- (1) Immediately appeal this federal court ruling and request a Stay of the court order. It is interesting to note that of the 34 states where OTT dicamba was labeled, only one of them (Arizona) is in the Ninth Circuit's jurisdiction. The Midwest and Southeast will be particularly hard hit financially by this decision as that is where the majority of soybeans and cotton is grown. Millions of acres are affected.
- (2) Immediately apply the traditional "existing stocks" procedure for the 2020 crop year so that an orderly process can replace the current confusion.

U.S. Secretary of Agriculture Sonny Perdue commented last evening on the importance and value of this tool: "Farmers across America have spent hard earned money on previously allowed crop protection tools. I encourage the EPA to use any available flexibilities to allow the continued use of already purchased dicamba products, which are a critical tool for American farmers to combat weeds resistant to many other herbicides, in fields that are already planted. Unfortunately, the Ninth Circuit has chosen to eliminate one of those tools." ARA supports the Secretary's statement and position.

Thank you for your review and consideration of this urgent request! We stand ready to work with you and the Office of Pesticide Programs as well as manufacturers to find solutions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Daren Coppock", with a large, stylized loop at the end.

W. Daren Coppock
President & CEO