

February 8, 2024

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Dear Administrator Regan,

We write to express our grave concern with the February 6, 2024, order in *Center for Biological Diversity, et. al, v. U.S. Environmental Protection Agency, et. al.* (hereafter the “Order”) issued by the U.S. District Court of Arizona. This deeply flawed Order, which vacated three registrations for post-emergent use of low-volatility dicamba on dicamba-tolerant (DT) soybeans and cotton (XtendiMax, Engenia, Tavium), comes at a remarkably sensitive time for U.S. soybean farmers and has caused great confusion and uncertainty in our rural communities. Moreover, the Order poses a significant financial and operational threat to individual farmers, environmental conservation efforts, and the broader economy and agricultural supply chains. To ease the risks of these harmful outcomes, we urge EPA to expeditiously provide use clarity to U.S. farmers in the form of a broad existing stocks order for dicamba manufactured under these registrations currently in the supply chain. Further, we request that EPA appeal this harmful and misguided Order, and to seek a stay pending appeal.

### ***Soybean Weed Pressures & Dicamba Use***

Soybean farmers rely on post-emergent dicamba to manage yield-robbing weeds, which have the potential to steal more than half of a crop’s yield and inflict more than \$15 billion in damages to U.S. soybean crops if not properly managed.<sup>1</sup> Some weed varieties, such as palmer amaranth, can exact catastrophic yield losses of nearly 80 percent if not controlled.<sup>2</sup> In recent years, post-emergent dicamba has proven an effective tool for managing these weed pests and others, especially weed populations that have selected for resistance to other herbicides or herbicidal modes of action (MOA).

The ability to apply dicamba on DT soybeans without damaging the crop during the critical post-emergent period—after the seedlings have emerged from the ground, but prior to the mature canopy closing—allows farmers to control weeds at a time when farmers have few other herbicidal tools to protect their crop. In fact, dicamba is one of only four herbicides widely available and registered for post-emergent use in soybeans.<sup>3</sup> Importantly, for many soybean farmers in areas with

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<sup>1</sup> Dille, Anita J., Peter H. Sikkema, Wesley J. Everman, Vince M. Davis, and Ian C. Burke. N.D. *Perspectives on soybean yield losses due to weeds in North America*. Accessed February 7, 2024. <https://wssa.net/wp-content/uploads/WSSA-2016-Soybean-Yield-Loss-poster.pdf>

<sup>2</sup> Bensch, Curtis N., Michael J. Horak, and Dallas Peterson. February 2003. “Interference of redroot pigweed (*Amaranthus retroflexus*), Palmer amaranth (*A. palmeri*), and common waterhemp (*A. rudis*) in soybean.” *Weed Science*. Vol. 51, Iss. 1. P. 37-43. <https://www.cambridge.org/core/journals/weed-science/article/abs/interference-of-redroot-pigweed-amaranthus-retroflexus-palmer-amaranth-a-palmeri-and-common-waterhemp-a-rudis-in-soybean/77AD7BB66D174C1E2A769EDE4FE4E3B6>

<sup>3</sup> Other herbicides currently registered for post-emergent use on soybeans in the U.S. with broad commercial availability are glyphosate, glufosinate, and 2,4-D.

high herbicide resistance pressures, dicamba is the ***only remaining post-emergent herbicide*** to which some local weed populations have not yet developed resistance. These farmers have no other effective option to protect their crops beyond dicamba.

Further, post-emergent dicamba has facilitated conservation on millions of acres of soybeans, especially reduced tillage. Reductions in soil tillage are well-documented to minimize soil erosion, reduce nutrient losses to watersheds, sequester greenhouse gases in the soil, reduce tractor fuel use, among many other benefits. Without effective herbicides to control weeds, including dicamba, many farmers may need to increase their soil tillage to terminate damaging weeds, thus sacrificing these important conservation benefits.

For these and other reasons, post-emergent dicamba use has been widely adopted by soybean farmers in recent years. We estimate that for the upcoming 2024 growing season approximately 45 percent of all U.S. soybean acres—or more than 37 million acres—are expected to be planted with DT soybean varieties. This is an area approximately the size of the state of Georgia.

### ***Potential Impacts of the Ruling***

As mentioned above, this Order comes at a challenging time for U.S. soybean growers. Virtually all soybean farmers placed their herbicide and herbicide-tolerant seed orders months ago, during the late summer, fall, or early winter, so that they will receive these orders ahead of spring planting, which is set to begin in the next several weeks. This early order window is vital so that agricultural supply chains have adequate time to provide inputs for hundreds of millions of acres of U.S. cropland. These supply chains cannot turn on a dime. Some manufacturers and retailers provide farmers a discount to order early and pre-pay to provide greater certainty on volume needs, meaning that thousands of growers have likely already invested millions of dollars in dicamba or DT seed purchases at this point, which they may not be able to recoup if they cannot receive or use dicamba.

If most soybean farmers decided to switch to other seed or herbicide varieties at this point in reaction to the Order, supply chains would not be able to accommodate demand of this magnitude. Put simply, there are nowhere near enough alternative seeds or herbicide volumes to meet demand of this magnitude. To accommodate a shift of tens of millions of acres, herbicide would have needed to be manufactured months or even years ago, and seed production would have needed to be ramped up one to two years prior.

Another challenge of the timing of the Order is that, while nearly all U.S. soybean farmers have locked in seed and herbicide orders, few have taken possession of their seed or herbicide on-farm at this point. Most volumes of seed or herbicide are still upstream in the supply chain, largely with retailers. If we assume no U.S. soybean farmers have yet taken delivery of their herbicide, and further assume that all soybean farmers were planning to make only one application of dicamba to all of the 37 million acres of DT soybeans anticipated to be planted in the U.S., that could leave 6.36 million gallons of dicamba from the affected registrations stranded with retailers and manufacturers.<sup>4</sup> The volume of herbicide stranded upstream is likely much greater, as many

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<sup>4</sup> The application rate for dicamba is 22 fluid ounces per acre. While we assume only one application per soybean acre, the label permits two applications annually and many growers would place orders planning to make two applications.

soybean growers make two applications of dicamba per acre annually, and these volume estimates do not include dicamba anticipated for use on DT cotton acres. If U.S. soybean farmers are not permitted to take delivery or use these dicamba volumes, it will not only present an enormous risk to the operations of hundreds of thousands of farms but also create a significant disposal challenge for retailers and manufacturers.

Some U.S. soybean farmers with the option to switch to limited supplies of alternative seed or herbicide varieties will likely try to do so in order to have greater certainty of post-emergent use. For example, some growers may seek to acquire greater volumes of glyphosate to compensate for uncertainty in the ability to acquire or use post-emergent dicamba resulting from the Order. As stated above, there is not nearly enough alternative herbicide to offset the volumes of dicamba or number of acres impacted by the Order. The increased market pressures of farmers attempting to acquire limited supplies of alternatives will likely place significant upward pressure on prices of these herbicides and may even result in shortages in some instances. This will not only affect U.S. soybean or cotton farmers, but also every other crop that uses these alternative herbicides. Across the country, farmers producing other crop types not subject to the Order stand to be harmed by increases in their herbicide prices or unavailability of product.

If farmers are uncertain of their ability to acquire or use the dicamba they have already ordered in the days to come, some may also increase soil tillage as a prophylactic measure to reduce weed pressures ahead of the growing season. Farmers would need to till ahead of spring planting and order additional tractor fuel to till, so the window is quickly closing for growers to make this decision. If clarity on the ability to receive or use dicamba is not offered swiftly, it could result in hundreds of thousands to millions of additional acres being tilled that would have not been tilled otherwise, forgoing significant soil erosion, nutrient management, and greenhouse gas reduction benefits.

Finally, we expect significant impacts on consumer and end user supply chains that rely on U.S. soybean production. Some farmers unable to use dicamba will experience substantial yield reductions if they are unable to control damaging weeds. If weed pressures are so great farmers can no longer meaningfully protect their crop, this could push anticipated farm income below the cost of production. In this instance, some growers might entirely forgo planting some acres. Both scenarios—yield reduction and unplanted acres—would reduce the size of the 2024 fall soybean harvest and likely push costs up for consumers.

### ***Existing Stocks Order & Order Appeal***

To mitigate the significant harms that this Order will inflict on U.S. farmers, the rural economy, consumers, and environmental conservation efforts, we implore EPA to move swiftly to grant certainty and relief. Spring planting is set to begin shortly, and hundreds of thousands of growers urgently need clarity as to whether they can receive and use dicamba on DT seed. For each day that passes without greater certainty, farmers will have to act in absence of information, which could include taking actions such as tilling soil or seeking crop input alternatives, which will most certainly have economic, environmental, and other repercussions discussed above.

We therefore urge EPA to issue a broad existing stocks order under FIFRA. This order should include the ability to use all volumes of low-volatility dicamba manufactured under the affected

registrations currently in commerce, from the manufacturer to the farm. As discussed above, at this point few farmers have taken possession of herbicide they have ordered for this growing season. If an existing stocks order is too narrow and does not allow for delivery of herbicide from upstream providers, including manufacturers and retailers, it will not be useful for farmers or preventing the harms described above.

It is also important that the existing stocks order permits continued post-emergent use of dicamba on DT crops. Failing to permit post-emergent use will result in growers who need post-emergent options to manage damaging weed threats during the critical post-emergent period to either till to reduce weed pressures or seek alternative post-emergent herbicides. These outcomes could result in the negative conservation and supply chain disruptions described above.

Finally, we have significant concerns with the appropriateness of the Order and the conclusions reached therein. We believe it will not only result in the negative impacts previously detailed, but also will significantly constrain EPA's regulatory authority under FIFRA. To that end, it would benefit the agency and stakeholders for EPA to appeal the ruling and seek a stay pending appeal to prevent the worst of these harms from coming to pass.

Farmers across the country, our environment, and consumers who rely on agricultural goods all stand to be significantly harmed if greater clarity is not swiftly offered regarding this Order. EPA should use its clear authority under FIFRA to grant certainty and relief to prevent these negative outcomes. We appreciate your attention to and action on this matter of paramount importance, and we stand ready to assist the agency in whatever ways we can to alleviate the challenges this ruling poses our nation's farmers and the consumers they serve.

Sincerely,

American Soybean Association  
Alabama Soybean and Corn Association  
Arkansas Soybean Association  
Georgia-Florida Soybean Association  
Illinois Soybean Growers  
Indiana Soybean Alliance  
Iowa Soybean Association  
Kansas Soybean Association  
Kentucky Soybean Association  
Louisiana Cotton & Grain Association  
Michigan Soybean Association  
Mid-Atlantic Soybean Association  
Minnesota Soybean Growers Association  
Mississippi Soybean Association  
Missouri Soybean Association  
Nebraska Soybean Association  
New York Corn and Soybean Growers Association  
North Carolina Soybean Producers Association  
North Dakota Soybean Growers Association  
Ohio Soybean Association

Oklahoma Soybean Association  
South Carolina Corn and Soybean Association  
South Dakota Soybean Association  
Tennessee Soybean Association  
Texas Soybean Association  
Virginia Soybean Association  
Wisconsin Soybean Association

CC: The Honorable Tom Vilsack, U.S. Secretary of Agriculture