



February 9, 2024

Michael S. Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

The National Association of State Departments of Agriculture, on behalf of 50 state departments of agriculture and 4 U.S. territories, writes to you today to express our deep concerns regarding the February 6, 2024 order in *Center for Biological Diversity, et.al, v. U.S. Environmental Protection Agency, et.al. issued by the U.S. District Court of Arizona*. This order vacates the registration for over-the-top (OTT) applications of dicamba on dicamba-tolerant soybeans and cotton, including dicamba products Xtendimax (Bayer), Engenia (BASF), and Tavium (Syngenta). Representing State Lead Agencies in 43 states, NASDA members are tasked with numerous elements of pesticide regulation that are immediately impacted by this decision, including the administration, implementation, and enforcement of the production, labeling, distribution, sale, use, and disposal of pesticides under FIFRA.

As a result of this decision, NASDA strongly encourages the Environmental Protection Agency to immediately use all available discretion under FIFRA to allow for the continuing sale, distribution, and use of existing stocks to ensure that all channels of trade for dicamba products currently existing in commerce are not disrupted. The EPA should immediately issue a Final Cancellation Order that allows products within the channels of trade that have already been manufactured and ready for sale on the date of the decision to be distributed, sold, and used under the Existing Stocks of Pesticide Products; Statement of Policy¹. This directive should extend to any manufactured product that is still at a registrant's facilities, in order to prevent disastrous impacts to the supply chain.

This court decision was issued days before the 2024 spring planting season, which means farmers have already developed farm plans and purchased seeds and pesticides. Without time to manufacture and establish alternative seeds and herbicides, farmers are left without a critical input necessary for a viable growing season. We anticipate that the U.S. will experience severe detrimental impacts to our food, fuel, and fiber availability if farmers are unable to execute their current growing plans. As you know, the EPA has the authority to allow for use of existing stocks when there is a clear articulation that the benefits associated with such sale, distribution, or use exceed the risks.

As co-regulatory partners committed to the preservation of environmental health, the rural economy, and a healthy supply chain, we implore the EPA to act expeditiously in providing much-needed clarity through a broad existing stocks order under FIFRA. Because of the timing of this court order, we urge that the EPA take careful consideration and accommodation of not only the product that may exist in the

¹ <https://19january2021snapshot.epa.gov/sites/static/files/2015-04/documents/56-fr-29362.pdf>

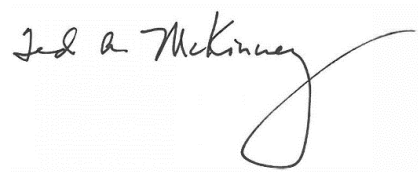
hands of growers today, but of the near-term need for producers to secure the product from manufacturers and retailers throughout the value chain. Anything short of addressing these concerns above will result in severe impacts to the upcoming growing season, and far-reaching impacts to producers ability to engage in responsible conservation practices designed to minimize runoff and erosion which have been at the core of the agency's recent efforts to address risks to threatened and endangered species and critical habitat.

Farmers require clear and immediate guidance from the EPA for the 2024 growing season. With growing economic and environmental pressures such as new and growing insect, pest, and crop disease threats, military conflicts, and global supply chain inefficiencies, it is more imperative than ever to ensure that farmers maintain access to effective pesticide products to safeguard a safe, affordable, and abundant food supply. The EPA possesses sole authority to grant the certainty and relief that farms desperately need to secure this future in light of the recent court decision.

NASDA also requests that the EPA work with pesticide registrants to expedite any potential product registrations ahead of the 2025 growing season to ensure that the potentially disastrous outcomes of 2024 are not repeated. NASDA stands ready to assist with this process in any way needed.

Providing certainty for the 2024 growing season through a flexible and inclusive existing stocks provision is the first step in responsibly responding to this decision in a way that prevents adverse impacts. NASDA looks forward to working with the EPA at this critical juncture to ensure expeditious movement in this area to make certain that state lead agencies are not in the unfortunate position of bringing enforcement action against responsible producers and distributors in our respective states.

Sincerely,

A handwritten signature in black ink that reads "Ted McKinney". The signature is fluid and cursive, with a large loop at the end of the last name.

Ted McKinney
Chief Executive Officer
NASDA

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)