

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN SOYBEAN ASSOCIATION,
12647 Olive Boulevard, Ste. 410
St. Louis, MO 63141

and

PLAINS COTTON GROWERS, INC.,
8303 Aberdeen Avenue
Lubbock, TX 79424

Plaintiffs,

vs.

ANDREW R. WHEELER, in his official
capacity as the Administrator of the U.S.
Environmental Protection Agency,
1200 Pennsylvania Avenue, NW
Washington, DC 20460

and

MARIETTA ECHEVERRIA, in her official
capacity as Acting Division Director of the
U.S. Environmental Protection Agency,
Office of Pesticide Programs, Registration
Division,
1200 Pennsylvania Avenue, NW
Washington, DC 20460

and

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Defendants.

Case No.:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs American Soybean Association and Plains Cotton Growers (collectively, “Plaintiffs” or “Growers”), bring this complaint against defendants Andrew R. Wheeler, Administrator of the U.S. Environmental Protection Agency; Marietta Echeverria, Acting Division Director of the U.S. Environmental Protection Agency, Office of Pesticide Programs, Registration Division; and the U.S. Environmental Protection Agency, and state as follows:

INTRODUCTION

1. This case concerns the United States Environmental Protection Agency’s (“EPA”) registration of the herbicide dicamba for use on soybean and cotton crops genetically engineered to withstand “over-the-top” applications of dicamba.

2. Dicamba, coupled with dicamba-tolerant (“DT”) soybean and cotton, are critical tools in American farmers’ efforts to combat herbicide-resistant weeds.

3. Herbicide-resistant weeds are a growing scourge, capable of crushing crop yields, overwhelming entire fields, and financially harming farmers. Dicamba and DT crops are critical weapons for farmers in their fight against these weeds.

4. Plaintiffs are cotton and soybean growers’ associations, whose members depend on dicamba and DT crops to keep their fields full, the nation’s supermarkets stocked, and the world fed, fueled, and clothed.

5. EPA recently registered dicamba for use on DT soybeans and cotton under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). In so doing, EPA imposed an array of application and use conditions on soybean and cotton growers, who are the end users of the dicamba product.

6. EPA's registration decision will arm Growers with an essential weed-management tool for the 2021 growing season and beyond. But some aspects of the registration decision are problematic for Growers, who depend on reasonable, consistent access to dicamba for use on DT soybeans and cotton.

7. In particular, several registration conditions impose growing restrictions and disrupt growing seasons which will diminish crop yields, cut productivity, and drive up operational costs. Some of these conditions are significantly more stringent than those found in past dicamba registrations.

8. This action challenges those conditions as arbitrary and capricious and beyond the agency's authority under FIFRA, the Endangered Species Act ("ESA"), and the Administrative Procedures Act. More specifically, this case seeks remand of EPA's temporal dicamba application restrictions and spatial application buffers.

9. This action also seeks to confirm that the remainder of EPA's registration decision satisfies FIFRA, the ESA, and the Administrative Procedures Act. Resolving these legal uncertainties is important because Growers are already making planting and seed-selection decisions for the 2021 growing season. Indeed, Growers are already investing billions of dollars into dicamba, DT soybean and cotton seed, and related products—investments that will be lost if EPA's broader registration decision were undone.

PARTIES

10. Plaintiffs are agricultural trade associations that represent farmers and their families nationwide. Their members' soybean and cotton crops provide the United States and the world with food, fuel, feed, and fiber.

11. Founded 100 years ago, Plaintiff American Soybean Association (“ASA”) is a national, not-for-profit trade association representing U.S. soybean growers on domestic and international issues of importance to the American soybean industry. ASA represents the interests of more than 300,000 soybean farmers nationwide.

12. Advocating and advising on pesticide and environmental regulation is one of the core tenets of ASA’s mission.¹ In addition to its advocacy efforts, ASA devotes substantial time and resources to grower education, regulatory compliance, and advising services, including advising growers on working through and complying with current and past dicamba registrations.² ASA’s efforts include diverting significant resources to advising, educating, and advocating on EPA’s recent dicamba registrations.

13. Established in 1956 by cotton producers from across the Texas High Plains production region, Plains Cotton Growers, Inc. is a non-profit producer organization composed of regional cotton producers. Plains Cotton Growers members annually plant between 3.5–4.5 million acres of cotton. The High Plains region represents the largest cotton production region in the United States and accounts for approximately one third of all planted U.S. cotton acreage.

14. Defendant Andrew R. Wheeler is the EPA Administrator and is sued in his official capacity. Under FIFRA, Administrator Wheeler—as head of the EPA—is the federal official responsible for pesticide registration, including the decisions challenged here.

¹ ASA, *Key Issues & Initiatives – Pesticide and Environment Regulations*, available at <https://soygrowers.com/key-issues-initiatives/key-issues/regulatory/> (last visited Oct. 22, 2020).

² ASA, *Grower Education*, available at <https://soygrowers.com/education-resources/grower-education/> (last visited Oct. 22, 2020).

15. Defendant Marietta Echeverria is Acting Division Director of the EPA's Office of Pesticide Programs, Registration Division, and is sued in her official capacity. In that role, Acting Director Echeverria approves and administers FIFRA registrations, including the decisions challenged here. Acting Director Echeverria reports to EPA Administrator Wheeler.

16. Defendant EPA is an agency of the United States federal government. FIFRA vests EPA with responsibility for registering pesticides, including the decisions challenged here. EPA is also responsible for ensuring that pesticide registrations comply with all applicable law.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331 (federal question jurisdiction), 5 U.S.C. § 702 (the Administrative Procedure Act or "APA"), and 7 U.S.C. § 136n(a) (FIFRA).

18. This Court has authority to issue the requested declaratory and injunctive relief under 5 U.S.C. §§ 701–706 (APA) and 28 U.S.C. §§ 2201–2202 (declaratory and injunctive relief).

19. This Court has personal jurisdiction over Administrator Wheeler, Acting Division Director Echeverria, and EPA, as each is an agency or official of the United States federal government, working and seated in Washington, D.C.

20. Venue is proper in this District under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1391(e) because Defendants reside in this District and because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District. Nearly everything concerning this case occurred in the District of Columbia, including EPA's decision-making process and EPA's actual registration decisions, which occurred out of its headquarters.

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