

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

AMERICAN SOYBEAN ASSOCIATION
and PLAINS COTTON GROWERS,

Plaintiffs,

v.

Michael S. Regan,¹ et. al.

Defendants,

and

BASF CORPORATION,

Defendant-Intervenor.

Civil Action No. 1:20-cv-03190 (RCL)

DEFENDANT- INTERVENOR BASF CORPORATION'S ANSWER TO COMPLAINT

Pursuant to Rule 24(c) of the Federal Rules of Civil Procedure, Defendant-Intervenor BASF Corporation submits this Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief (filed November 4, 2020).

INTRODUCTION

1. Admitted.
2. Admitted.
3. BASF admits generally that herbicide-resistant weeds are a challenge for farmers and that dicamba and DT crops are critical weapons for farmers in their fight against these weeds.

¹ Automatically substituted pursuant to Federal Rule of Civil Procedure 25(d).

4. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4.

5. BASF admits that on October 27, 2020, EPA granted registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) approving use of dicamba on DT soybeans and cotton and imposing conditions on those uses.

6. BASF admits the first sentence of paragraph 6. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 6.

7. BASF admits that some conditions included in the new registrations are more stringent than those found in prior registrations. BASF lacks knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 7.

8. Paragraph 8 characterizes this lawsuit and accordingly does not require a response.

9. The first sentence of Paragraph 9 characterizes this lawsuit and accordingly does not require a response. BASF admits the allegations in the second and third sentences of Paragraph 9.

PARTIES

10. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, which concern the interests and actions of Plaintiffs.

11. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, which concern the interests and actions of Plaintiffs.

12. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, which concern the interests and actions of Plaintiffs.

13. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13, which concern the interests and actions of Plaintiffs.

14. BASF denies that Andrew R. Wheeler is the current EPA Administrator. While he held that position when the original Complaint was filed, the current EPA Administrator is Michael S. Regan. BASF admits the remainder of the allegations in Paragraph 14.

15. Admitted.

16. Admitted.

JURISDICTION AND VENUE

17. BASF admits that this Court has subject matter jurisdiction over Plaintiffs' claims under 7 U.S.C. § 136n(a), because the October 27, 2020 registration orders were final agency actions not following a "public hearing." BASF further informs the Court that after this action was filed on November 4, 2020, other actions involving the same October 27, 2020 registration orders were filed in other courts. Plaintiffs American Soybean Association and Plains Cotton Growers filed protective petitions in the D.C. Circuit and Fifth Circuit Courts of Appeal, respectively, to preserve their ability to bring their claims if it is subsequently determined that there was a "public hearing" and thus that the Courts of Appeal have exclusive jurisdiction over their claims under 7 U.S.C. § 136n(b).² The National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity, and Pesticide Action Network North America filed a petition for review in the Ninth Circuit on December 21, 2020 seeking to have the October 27,

² See Petition for Review, *Am. Soybean Ass'n v. Wheeler*, 20-1441 (D.C. Cir. Nov. 5, 2020); Petition for Review, *Am. Soybean Ass'n v. Wheeler*, 20-1445 (D.C. Cir. Nov. 10, 2020); Petition for Review, *Plains Cotton Growers v. Wheeler*, 20-61055 (5th Cir. Nov. 13, 2020). American Soybean Association apparently filed two protective petitions because of uncertainty over how soon petitions for review can be filed pursuant to 40 C.F.R. § 23.6 and 7 U.S.C. § 136n(b). Plains Cotton Growers filed their protective petition in the Fifth Circuit because they do not reside or have a place of business within the D.C. Circuit. 7 U.S.C. § 136n(b).

2020 registrations found unlawful and vacated.³ By Order of the Judicial Panel on Multidistrict Litigation, those petitions have all been transferred to and consolidated in the D.C. Circuit.⁴ On December 23, 2020, the National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity, and Pesticide Action Network North America filed an action in the U.S. District Court for the District of Arizona, seeking to have the October 27, 2020 registrations found unlawful and vacated.⁵ Unopposed motions for abeyance filed by the Federal Defendants were granted in all three pending actions, with this action held in abeyance until April 6, 2021 and the actions pending in the Arizona District Court and the D.C. Circuit Court held in abeyance until April 9, 2021.⁶

18. Paragraph 18 states conclusions of law, to which no response is required.

19. BASF admits that this Court has personal jurisdiction over Administrator Regan, Acting Division Director Echeverria, and EPA.

20. BASF admits that venue is proper in this District.

³ See Petition for Review, *National Family Farm Coalition v. EPA*, 20-73750 (9th Cir. Dec. 21, 2020).

⁴ See Notice of Consolidation Order, *Am. Soybean Ass'n v. Wheeler*, 20-1441 (D.C. Cir. Dec. 3, 2020); *Id.*, Order (Feb. 2, 2021); Clerk Order, *Plains Cotton Growers v. Wheeler*, 20-61055 (5th Cir. Dec. 3, 2020); Order, *National Family Farm Coalition v. EPA*, 20-73750 (9th Cir. Jan. 26, 2021).

⁵ See Complaint, *Ctr. for Biological Diversity v. EPA*, 4:20-cv-555-DCB (D. Ariz. Dec. 23, 2020).

⁶ Order, *Am. Soybean Ass'n v. Wheeler*, No. 1:20-cv-3190-RCL, Dkt. No. 37 (D.D.C. Feb. 5, 2021); Order, *Am. Soybean Ass'n v. Wheeler*, 20-1441 (D.C. Cir. Feb. 8, 2021); Order, *Ctr. For Biological Diversity v. EPA*, 4:20-cv-555-DCB (D. Ariz. Feb. 8, 2021).

STATUTORY AND REGULATORY FRAMEWORK

A. The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”)

21. The first sentence of Paragraph 21 states a conclusion of law, to which no response is required. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 21.

22. Paragraph 22 states a conclusion of law, to which no response is required.

23. Paragraph 23 states a conclusion of law, to which no response is required.

24. Paragraph 24 states a conclusion of law, to which no response is required.

25. Paragraph 25 states a conclusion of law, to which no response is required.

B. The Endangered Species Act (“ESA”)

26. Paragraph 26 states a conclusion of law, to which no response is required.

27. Paragraph 27 states a conclusion of law, to which no response is required.

28. Paragraph 28 states a conclusion of law, to which no response is required.

29. Paragraph 29 states a conclusion of law, to which no response is required.

30. Paragraph 30 states a conclusion of law, to which no response is required.

FACTUAL BACKGROUND

31. Admitted.

32. BASF admits that the Dicamba Memorandum and registrations are supported by additional EPA analyses and documents, and denies that these unspecified documents together with the Dicamba Memorandum and the individual registrations constitute a single “Dicamba Decision.”

33. BASF admits that soybean and cotton are important crops for US agriculture, and that dicamba is a critical tool in Growers’ fight against herbicide-resistant weeds.

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