

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOYBEAN ASSOCIATION
and PLAINS COTTON GROWERS, INC.,

Plaintiffs,

v.

MICHAEL S. REGAN,* in his official
capacity as the Administrator of the U.S.
Environmental Protection Agency,
MARIETTA ECHEVERRIA, in her official
capacity as Acting Division Director of the
U.S. Environmental Protection Agency, Office
of Pesticide Programs, Registration Division,
and UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendants,

and

BAYER CROPSCIENCE LP, BASF
CORPORATION, and SYNGENTA CROP
PROTECTION, LLC,

Intervenor-Defendants.

Case No. 1:20-cv-3190-RCL

ANSWER OF INTERVENOR-DEFENDANT BAYER CROPSCIENCE LP

Intervenor-Defendant Bayer CropScience LP answers Plaintiffs' Complaint for Declaratory and Injunctive Relief (ECF No. 1) as follows:

INTRODUCTION

1. Paragraph 1 contains Plaintiffs' characterization of this case, which requires no response. To the extent that a response is required, Bayer admits that its registered dicamba

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

herbicide can be safely and effectively applied in accordance with the terms of the product label to soybean and cotton crops genetically engineered to withstand “over-the-top” applications of dicamba.

2. Paragraph 2 contains Plaintiffs’ characterization of this case, which requires no response. To the extent that a response is required, Bayer admits that its dicamba herbicide and dicamba-tolerant (DT) crops are critical tools for American farmers’ efforts to combat herbicide-resistant weeds.

3. Paragraph 3 contains Plaintiffs’ characterization of this case, which requires no response. To the extent that a response is required, Bayer admits that herbicide-resistant weeds can pose a substantial problem for growers in those areas where such weeds are present, and that Bayer’s DT crops and dicamba herbicide are critical tools for farmers in those areas.

4. Paragraph 4 provides Plaintiffs’ description of themselves and their members. Bayer admits that Plaintiffs are cotton and soybean growers’ associations and understands that Plaintiffs’ members depend upon dicamba herbicides to ensure successful crops.

5. Paragraph 5 asserts that EPA recently registered dicamba under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use on DT soybean and cotton and that EPA imposed various application and use conditions on soybean and cotton growers. Bayer admits that EPA registered dicamba for use on DT soybean and cotton on October 27, 2020, and that EPA’s registration decision imposes application and use conditions. *See* ECF No. 1-1.

6. Paragraph 6 asserts that EPA’s registration decision will provide growers with an essential weed-management tool but that unspecified aspects of the decision are problematic for growers. Bayer admits that the EPA’s registration decision provides growers an essential weed-management tool for the 2021 season and beyond. Bayer recognizes that the EPA requirements

on the labels for its dicamba herbicides impose specific conditions for use that can have impacts on farm management, but lacks knowledge or information sufficient to form a belief about the unspecified aspects of the decision addressed by this paragraph.

7. Paragraph 7 asserts that certain registration conditions will reduce crop yields and productivity and increase operational costs, and that some conditions are significantly stricter than past dicamba registrations. Bayer recognizes that the EPA requirements on the labels for its dicamba herbicides impose specific conditions for use that can have impacts on farm management, but lacks knowledge or information sufficient to form a belief about unspecified aspects of the decision addressed by this paragraph.

8. Paragraph 8 provides Plaintiffs' characterization of this case and specifies the relief they seek, which requires no response.

9. Paragraph 9 provides Plaintiffs' additional characterization of this case and asserts that resolving legal uncertainties about the EPA's registration decision is important for growers and implicates billions of dollars in investments by growers. Bayer agrees that the EPA's registration decision "satisfies FIFRA, the ESA, and the Administrative Procedure[] Act" and admits that the decision is important for growers and implicates billions of dollars in investments. Plaintiffs' additional characterization of this case requires no response.

PARTIES

10. Paragraph 10 provides Plaintiffs' description of themselves and their members' activities. Bayer admits the allegations in this paragraph.

11. Paragraph 11 provides Plaintiffs' description of Plaintiff American Soybean Association (ASA). Bayer admits the allegations in this paragraph.

12. Paragraph 12 provides Plaintiffs' additional description of ASA. Bayer admits the allegations in this paragraph.

13. Paragraph 13 provides Plaintiffs' description of Plaintiff Plains Cotton Growers, Inc. Bayer admits that Plains Cotton Growers, Inc. is a non-profit producer organization composed of regional cotton producers but lacks knowledge or information sufficient to form a belief about the truth of the remaining assertions in paragraph 13.

14. Paragraph 14 asserts that Defendant Andrew R. Wheeler is the EPA Administrator, that he is sued in his official capacity, and that he is the federal official responsible for pesticide registrations under FIFRA. Michael S. Regan was confirmed as EPA Administrator on March 11, 2021. *See* EPA, *EPA Administrator: Michael S. Regan*, <https://www.epa.gov/aboutepa/epa-administrator> (last visited Mar. 29, 2021). Pursuant to Federal Rule of Civil Procedure 25(d), Regan thus automatically replaced Wheeler in this case. Bayer admits that EPA is the federal agency with authority to register pesticides under FIFRA, including issuing the decisions challenged here, and that the EPA Administrator is the head of EPA.

15. Paragraph 15 asserts that Defendant Marietta Echeverria is Acting Division Director of EPA's Office of Pesticide Programs, Registration Division, that she is sued in her official capacity, that she approves and administers FIFRA registrations including the decisions challenged here, and that she reports to the EPA Administrator. Bayer admits that Echeverria signed the decision document as the Acting Division Director of EPA's Office of Pesticide Programs, Registration Division.

16. Paragraph 16 asserts that Defendant EPA is an agency of the United States government, that FIFRA vests EPA with responsibility for registering pesticides, and that EPA is responsible for ensuring that pesticide registrations comply with all applicable law. These are legal conclusions that require no response.

JURISDICTION AND VENUE

17. Paragraph 17 states legal conclusions about subject-matter jurisdiction, which require no response.

18. Paragraph 18 states legal conclusions about relief, which require no response.

19. Paragraph 19 states legal conclusions about personal jurisdiction over Defendants Regan, Echeverria, and EPA, and asserts that each is “working and seated in Washington, D.C.” These legal conclusions require no response. To the extent that a response is required, Bayer admits that EPA’s headquarters are located in Washington, DC.

20. Paragraph 20 states legal conclusions about venue that require no response. To the extent that a response is required, Bayer admits that relevant events underlying the registration decision occurred in Washington, DC.

STATUTORY AND REGULATORY FRAMEWORK

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

21. Paragraph 21 provides Plaintiffs’ characterization of FIFRA, which requires no response. The statute speaks for itself and is in its entirety the best evidence of its content. Bayer denies any allegations that are inconsistent with the statute. Paragraph 21 also asserts that “[a]pproximately 18,000 pesticides were in use across the country as of 2012.” Bayer lacks knowledge or information sufficient to form a belief about the total quantity of pesticides in use across America in 2012.

22. Paragraph 22 provides Plaintiffs’ characterization of FIFRA provisions, which requires no response. FIFRA’s provisions speak for themselves and are in their entirety the best evidence of their own content. Bayer denies any allegations inconsistent with the statute.

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