American Soybean Association

12647 Olive Boulevard, Suite 410, St. Louis, MO 63141 • PHONE: (314) 576-1770

August 10, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Administrator Wheeler,

On behalf of the American Soybean Association (ASA), I write regarding the timing of EPA's decision on a new conditional registration for the use of dicamba for over-the-top (OTT), post-emergent use on dicamba-tolerant (DT) crops. ASA represents all U.S. soybean farmers on domestic and international policy issues important to the soybean industry and has 26 affiliated state associations representing 30 soybean-producing states.

ASA recently learned of EPA's intent to publish its decision concerning a new conditional registration for dicamba for OTT, post-emergent use on DT crops at the end of October 2020. We are concerned by this timeframe and the adverse impacts it would likely have on growers for the 2021 growing season and potentially beyond. Many growers make planting decisions for the upcoming growing season in late August or September to capture the significant benefits in placing early seed and input orders and ensuring product availability. A registration decision at the end of October or later would force growers into the difficult position of choosing between forgoing these early planting decision benefits to wait for the clarity offered by EPA's registration decision; or making early planting decisions and assume the risk that EPA's registration decision may not meet their agronomical needs.

Compounding the matter, the Ninth Circuit Court's recent ruling vacating the registrations for three dicamba products has shaken the agricultural community's confidence regarding EPA's regulatory authority and the future availability of critically-needed crop protection tools. To minimize disruptions and offer the greatest certainty for America's soybean producers, we urge EPA to issue its registration decision for OTT, post-emergent use expeditiously – no later than early September.

Availability of Dicamba for OTT, Post-Emergent Use

Herbicide-resistant weeds are a very real threat to U.S. soybean producers and American agriculture broadly. An estimate from 2014 places the cost of herbicide-resistant weeds for U.S. producers at more than $2 billion annually.[1] Importantly, costs of losing weed control options

[1] Sfiligoj, Eric. April 1, 2014. "The Weed Resistance Problem: A Matter of Billions," *Crop Life*. https://www.croplife.com/crop-inputs/herbicides/the-weed-resistance-problem-a-matter-of-billions/

should not only be considered in terms of yield loss. Conservation practices – such a low or no-till soil management strategies that are better enabled by herbicide-tolerant (HT) crops and their companion chemistries – are diminished when weed populations develop herbicide resistance, resulting in increased soil erosion and greenhouse gas (GHG) emissions. A 2018 study found that when glyphosate-resistant weeds became prevalent in U.S. soybean fields, conservation tillage and no-till practices fell by 6.2 percent and 9.2 percent respectively, resulting in a cost of more than $470 million in water quality and climate damages over a decade.[2]

We view the availability of dicamba for use on DT crops as a vital tool for many growers to help mitigate these herbicide-resistant weed pressures and maintain these important conservation practices. To gather a better understanding of how our members use dicamba, ASA recently conducted a survey of our Board of Directors from June 26-29, 2020 regarding their dicamba use experience during the 2020 growing season. While not necessarily representative of the entire U.S. soybean grower community, our survey did receive a 75 percent response rate, and we believe it helps to provide glimpse of the U.S. grower dicamba experience. Of the respondents who use DT soybeans, 89.7 percent indicated they use dicamba to manage weeds resistant to other herbicides.[3] When this response is considered in relation to the roughly 54 million acres of DT soybeans planted in the U.S. in 2019[4] (approximately two-thirds of the total 2019 U.S. soybean acres[5] and a 170 percent increase from the estimated 20 million acres of DT soybeans planted in 2017[6]), we see a picture emerge where dicamba serves as a popular, effective tool to control weeds resistant to other chemistries, saving U.S. growers hundreds of millions to billions of dollars in preserved yields and operating costs[7] and tens to hundreds of millions of dollars in preserved conservation benefits annually.

ASA recognizes that OTT, post-emergent dicamba use has not been without off-target difficulties since its introduction in 2016. We do not take these challenges lightly. ASA has been quick and eager to partner with EPA, the registrants, extension personnel, retailers, and other agricultural stakeholders to increase awareness of these risks and educate growers and applicators alike in how to minimize off-target risks. These stakeholder education efforts, coupled with label amendments by EPA and mandatory applicator training have had a demonstrable impact in mitigating these challenges, especially when compared to the significant increase in DT acres in production the last several years. Assuming the continued availability of

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[2] Van Deynze, Braeden, Scott M. Swinton, and David A. Hennessy. August 2018. "Are Glyphosate-Resistant Weeds a Threat to Conservation Agriculture? Evidence from Tillage Practices in Soybean," Presented at the Agricultural & Applied Economics Association (AAEA) Annual Meeting in Washington, DC, August 2018.

[3] American Soybean Association. Board of Directors Dicamba Survey. Conducted June 26-29, 2020.

[4] Unglesbee, Emily. October 17, 2019. "Soybean Decisions: A Review of Herbicide Tolerant Soybean Trait Options for 2020," *Progressive Farmer.* https://www.dtnpf.com/agriculture/web/ag/crops/article/2019/10/17/review-herbicide-tolerant-soybean

[5] U.S. Department of Agriculture. National Agriculture Statistics Service. Agricultural Statistics Board. *Acreage Report*. (June 28, 2019). https://www.nass.usda.gov/Publications/Todays_Reports/reports/acrg0619.pdf

[6] Abbot, Chuck. January 5, 2018. "Monsanto Expects its Dicamba-Tolerant Seeds on 40% of U.S. Soy Acres," *Successful Farming.* https://www.agriculture.com/crops/soybeans/monsanto-expects-its-dicamba-tolerant-seeds-on-40-of-us-soy-acres

[7] Calculated for soybeans only U.S. Department of Agriculture Economic Research Service (ERS) publication "The Economics of Glyphosate Resistance Management in Corn and Soybean Production", April 2015, (https://www.ers.usda.gov/webdocs/publications/45354/52761_err184.pdf?v=42207) estimate from 2012 of return reductions due to declines in glyphosate effectiveness (Table 5) of $22.53 per acre. Using a Bureau of Labor Statistics calculation to adjust for inflation ($24.55 per acre for June 2020), and assuming 54 million acres of DT soybeans in production for 2019 (Unglesbee), we estimate potential return reductions of $1.326 billion.

the product for OTT, post-emergent use, ASA supports maintaining these efforts in the future to continue to minimize off-target risks.

To that end, ASA continues to support a new conditional registration for a duration longer than two years that makes available dicamba for OTT, post-emergent use, coupled with a practical, detailed label and assertive training for applicators to minimize off-target risks. The increasing pressures of yield-robbing weeds resistant to other herbicides necessitates that growers have continued access to dicamba and a broad array of other crop protection tools using a variety of mechanisms of action. Dicamba is not only directly beneficial for managing weeds. When used in conjunction with these other tools as part of a broader Integrated Pest Management (IPM) strategy, dicamba can help to minimize the risk of weed populations developing resistance to any one tool or technique, and allow farmers to continue to implement sustainable conservation practices. Moreover, the experiences gained from previous growing seasons and continued improvements to the label and training programs should allow for a longer-term registration beyond the historical two years. This would grant growers and other stakeholders increased predictability of product availability for future growing seasons – a serious challenge currently facing U.S. producers, which we discuss further below.

Grower Confidence & Benefits of Early Planting Decisions

In addition to supporting a new, longer-term conditional registration, ASA also urges EPA to publish its registration decision expeditiously – no later than early September. Many growers will make their planting decisions for the 2021 growing decision by late August or early September, as there are significant economic and certainty benefits in doing so. Growing plans and seed and input supply chains are complicated and take months – in some cases years – to react to significant regulatory or market developments. Additionally, the uncertainty in rural America surrounding this registration decision has been heightened by Ninth Circuit's recent ruling vacating the registrations for three dicamba products. An earlier registration decision by EPA could help to instill confidence in our agricultural communities that EPA stands by its work and will work to ensure much-needed crop protection tools will be available to growers.

The predictability benefit offered by an early and long-term registration decision would stay with growers for multiple years. As part of their IPM strategies, farmers must develop crop rotation plans for fields years in advance to best manage soil quality and minimize pest and disease pressures. As a Kentucky grower explains, "our crop plan isn't a year-to-year thing; it's something that we've mapped out for the next five years. This year's crop is made; you've got to be thinking about next year's crop and even the crops that are coming in behind it in the next two or three years."[8] A grower can be placed in a terrible dilemma if they face significant weed resistance challenges, are anticipating access to certain products to manage those pressures, and then unexpectedly learn they will not be able to access or meaningfully use those tools. Their remaining options are to scramble to find potential replacement tools (a decision which could erode the efficacy of those tools and expedite weed resistance for future growing seasons); accept a certain degree of yield loss to weed pressures; or break their crop rotation plan, which

[8] United Soybean Board. August 22, 2019. "Overwhelmed by Soybean Seed Options?" https://www.unitedsoybean.org/article/overwhelmed-by-soybean-seed-options

often significantly exacerbates weed and other pest pressures for current and future growing seasons.

The timing and duration of EPA's registration decision related to the complicated seed and input supply chain logistics will also significantly impact growers. Seed companies must predict product availability and market demand years in advance to ramp up the volume of certain seed varieties to sufficiently supply hundreds of thousands of farmers seeking to commercially plant tens of millions of acres.[9] Additionally, when a grower places a seed order in August or September for an upcoming growing season, they will often have to simultaneously order inputs, such as crop protection tools or fertilizer, as well as arrange for custom seed treatment applications. These additional layers of intricacy add months to procurement timeframes. The logistics complications are so profound that retailers regularly provide growers significant discounts – sometimes 10 percent or higher – to place orders before mid-September compared to orders placed in February or March.[10] These incentives can save individual growers tens of thousands of dollars in input costs. Also of concern, if a grower waits for too long to place an order, preferred seed varieties or needed inputs may not be available due to limited supply.[11] However, if a grower faces significant weed resistance pressures and places great value on ensuring access to dicamba for use on DT crops to manage those challenges, they may choose to forgo these early order incentives to await an end-of-October registration decision, significantly weakening their economic viability.

Finally, we wanted to make you aware of the heightened anxiety surrounding this specific registration decision and EPA's broader registration activities, provoked by the recent Ninth Circuit ruling vacating the registrations for three dicamba products. In our recent ASA Board of Directors survey, 66.7 percent of respondents indicated they were extremely concerned by the ruling, with 92.9 percent expressing, to some degree, concern that the ruling would create a precedent that allowed for EPA's independent pesticide regulatory authority to be undermined or circumvented.[12] Again, we realize our sample size does not permit us to confidently extrapolate these results to the greater growing community. However, based on the countless apprehension-filled conversations we have had with our members and grower colleagues in the months following the Ninth Circuit ruling, we believe these results accurately capture the current mood of uncertainty in rural America surrounding the future availability of dicamba and other crop protection tools. An earlier, longer-term registration from EPA would go a long way in reaffirming grower confidence in EPA's regulatory process and expertise and the agency's intention to stand by their science and risk-based regulatory decisions, regardless of flawed, misguided judicial rulings.

To maximize the weed management and conservation benefits for our agricultural community and avoid the potential harms that would accompany a later registration decision, we encourage

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[9] Schafer, Sara. July 26, 2014. "Soybean Seed Systematics," *AgWeb.* https://www.agweb.com/article/soybean_seed_systematics_NAA_Sara_Schafer

[10] Fiechter, Chad, and Jennifer Ifft. October 10, 2019. "Seed Corn Costs: How Large Are the Discounts?" *Farmdoc Daily.* Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign. https://farmdocdaily.illinois.edu/2019/10/seed-corn-costs-how-large-are-the-discounts.html

[11] Ohio's Country Journal. February 23, 2018. "Sluggish soybean seed orders for 2018,"*Ohio's Country Journal.* https://www.ocj.com/2018/02/sluggish-soybean-seed-orders-for-2018/

[12] American Soybean Association. Board of Directors Dicamba Survey.

EPA to expeditiously issue a registration decision allowing dicamba for OTT, post-emergent use on DT crops by early September. We also support a conditional registration duration longer than the historical two years, coupled with a practical, detailed label and assertive training for applicators that capitalizes on previous growing season experiences to minimize any risks of product use. These actions will grant farmers the certainty of product availability for future growing seasons and broaden the grower toolbox to enable productive, sustainable, responsible use for years to come.

We thank you for your work and attention to this important matter, and stand ready to assist EPA in these efforts as necessary and appropriate.

Sincerely,

Bill Gordon
President

CC: The Honorable Alexandra Dunn