Message

From: Siedschlag, Gregory [Siedschlag.Gregory@epa.gov]
Sent: 11/2/2020 8:00:03 PM
To: Messina, Edward [Messina.Edward@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]; Layne, Arnold [Layne.Arnold@epa.gov]
CC: Cyran, Carissa [Cyran.Carissa@epa.gov]; Lara, Rhina [Lara.Rhina@epa.gov]; Piper, Maya [Piper.Maya@epa.gov]; Dinkins, Darlene [Dinkins.Darlene@epa.gov]
Subject: RE: OPP IO REVIEW: Dicamba decision questions

Got it – thanks!

Greg Siedschlag
Chief, Communications Branch
Office of Chemical Safety and Pollution Prevention
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Phone: (703) 603-9044
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pronouns: he/him/his

From: Messina, Edward <Messina.Edward@epa.gov>
Sent: Monday, November 02, 2020 2:56 PM
To: Siedschlag, Gregory <Siedschlag.Gregory@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>; Layne, Arnold <Layne.Arnold@epa.gov>
Cc: Cyran, Carissa <Cyran.Carissa@epa.gov>; Lara, Rhina <Lara.Rhina@epa.gov>; Piper, Maya <Piper.Maya@epa.gov>; Dinkins, Darlene <Dinkins.Darlene@epa.gov>
Subject: RE: OPP IO REVIEW: Dicamba decision questions

they should consult with EPA and consider doing so under section 24(a) of FIFRA.

Ed Messina, Esq.
Acting Office Director
Office of Pesticide Programs
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From: Siedschlag, Gregory <Siedschlag.Gregory@epa.gov>
Sent: Monday, November 02, 2020 2:36 PM
To: Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>; Layne, Arnold <Layne.Arnold@epa.gov>
Cc: Cyran, Carissa <Cyran.Carissa@epa.gov>; Lara, Rhina <Lara.Rhina@epa.gov>; Piper, Maya <Piper.Maya@epa.gov>; Dinkins, Darlene <Dinkins.Darlene@epa.gov>
Subject: OPP IO REVIEW: Dicamba decision questions
Importance: High

Hello,

Please see our response below on this dicamba inquiry. Quick review requested. This has been approved by RD and OGC. We got the response out of the registration decision. The reporter had a lead-in for these questions that you can see below if you're curious. We have chosen to take a more general approach rather than answer question by question.

Questions:

1. Does the Tuesday dicamba registration decision and announcement re: FIFRA Section 24(c) mark an official change in EPA's position on states' use of Section 24(c)? And if so, has EPA decided to skip the public comment period it committed to on this topic in the spring of 2019?

2. Will this stance on 24c (no state restrictions, only expansions) be applied by EPA uniformly to all future state SLN labels on all pesticides, beyond dicamba?

3. Has EPA's position on this been prompted or influenced by the EPA's Inspector General investigation into states' use of Section 24(c)?

4. Via AAPCO, state regulators have directly petitioned EPA not to take this stance on Section 24(c), which will greatly limit states' ability to react quickly to new dicamba labels, given the cumbersome and time-consuming process of state rulemaking permitted via 24(a). Did EPA consult with state regulators or inform them of this new stance (no restrictions via 24 (c)) before the dicamba decision? Because the state regulators I have spoken to seem taken completely off guard by this announcement by their federal co-regulators.

Ex. 5 Deliberative Process (DP)

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From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Monday, November 2, 2020 11:13 AM
To: Dennis, Allison <Dennis.Allison@epa.gov>; OPS CISD CB <OPS_CISD_CB@epa.gov>
Subject: RE: Dicamba decision questions

Hello everyone,

The reporter just pinged on the below.

Please let me know the status of her response.

Thanks,

Angela

From: Hackel, Angela
Sent: Wednesday, October 28, 2020 8:39 AM
To: Dennis, Allison <Dennis.Allison@epa.gov>; OPS CISD CB <OPS_CISD_CB@epa.gov>
Subject: FW: Dicamba decision questions

Hello everyone,

Please see the below. Her deadline is COB tomorrow.

Please let me know how you would like to respond.

Thanks,

Angela

From: Emily Unglesbee <Emily.Unglesbee@dtn.com>
Sent: Wednesday, October 28, 2020 8:29 AM
To: Press <Press@epa.gov>; Labbe, Ken <Labbe.Ken@epa.gov>
Subject: Dicamba decision questions

I have some questions for EPA on what the Tuesday dicamba announcement by Administrator Andrew Wheeler and Assistant Administrator for OCSPP, Alexandra Dunn mean for state regulation of dicamba going forward.

On the press call yesterday, Dunn stated that any future restrictions by states of the federal label would be required to work via Section 24(a) of FIFRA, which means they would involve rulemaking legislative processes by individual states. She said that Section 24(c) would only be used for proposed expansions of the federal label by states. This stance is reiterated in the EPA's Memorandum on the dicamba decision: "FIFRA section 24(a) allows a state to regulate pesticides more restrictively than EPA under the state's own authority. However, some of the states that have imposed cut-off dates on dicamba uses have done so under section 24(c). Section 24(c) only authorizes states to issue registrations for additional uses of federal registrations to meet special local needs; if states wish to impose further restrictions on the dicamba products, or any other federally registered pesticides, they should do so under section 24(a) of FIFRA."

This is a change in EPA's past interpretation of Section 24(c), which is something EPA has suggested it might do in the past, as stated in this spring 2019 statement: "Because section 24(a) allows states to regulate the use of any federally registered pesticide, and some states have instead used 24(c) to implement cut-off dates (and/or impose other restrictions), EPA is now re-evaluating its approach to reviewing 24(c) registrations and the circumstances under which it will exercise its authority to disapprove those registrations." Source: https://www.epa.gov/pesticide-registration/guidance-fifra-24c-registrations.

However, that EPA statement added this: "Before making any changes in this regard, EPA intends to take public comment on any potential new approaches before adopting them."n

So here are my questions:

1. **Does the Tuesday dicamba registration decision and announcement re: FIFRA Section 24(c) mark an official change in EPA's position on states' use of Section 24(c)? And if so, has EPA decided to skip the public comment period it committed to on this topic in the spring of 2019?**

2. **Will this stance on 24c (no state restrictions, only expansions) be applied by EPA uniformly to all future state SLN labels on all pesticides, beyond dicamba?**

3. **Has EPA's position on this been prompted or influenced by the EPA's Inspector General investigation into states' use of Section 24(c)?**

4. **Via AAPCO, state regulators have directly petitioned EPA not to take this stance on Section 24(c), which will greatly limit states' ability to react quickly to new dicamba labels, given the cumbersome and time-consuming process of state rulemaking permitted via 24(a). Did EPA consult with state regulators or inform them of this new stance (no restrictions via 24 (c)) before the dicamba decision? Because the state regulators I have spoken to seem taken completely off guard by this announcement by their federal co-regulators.**

Emily Unglesbee
Staff Reporter, DTN

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