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## **DICAMBA: RECENT LEGAL RULINGS ON DICAMBA FORMULATIONS DESIGNED FOR OVER THE TOP APPLICATIONS TO TOLERANT SOYBEANS**

On June 3, the U.S. 9th Circuit Court ruled that EPA had not carried out their statutory responsibility with respect to the issuance of three dicamba registrations: Engenia, FeXapan, and Xtendimax. As a consequence, the court vacated their registrations. Essentially, this is legal talk for saying these registrations no longer exist.

What was so unprecedented about this ruling is the court did not give EPA any directions on cancelling these products. After reviewing the ruling, registrants stopped distribution to retailers on June 4. By that afternoon, the North Dakota Department of Agriculture (NDDA) indicated in a news release, that the sale and use of these products were no longer legal. By the afternoon of June 5, the NDDA reversed their earlier position and instructed dealers and applicators that sales and use may resume under state registration until such time as EPA clarified what the court ruling meant.

### **The main points of the order are as follows:**

**1. Distribution or sale by the registrant.** Distribution or sale by the registrant (BASF, Bayer and Corteva) of all existing stocks of the three products listed below is prohibited effective as of the time of the order on June 3, 2020, except for distribution for the purposes of proper disposal.

**2. Distribution or sale by persons other than the registrant.** Distribution or sale of existing stocks of the three products listed above that are already in the possession of persons other than the registrant is permitted only for the purposes of proper disposal or to facilitate return to the registrant or a registered establishment under contract with the registrant, unless otherwise allowed in item #3 or #4 below.

**3. Distribution or sale by commercial applicators.** For the purpose of facilitating use no later than July 31, 2020, distribution or sale of existing stocks of the three products listed above that are in the possession of commercial applicators is permitted.

**4. Use.** Use of existing stocks of products listed above inconsistent with any respect with the previously approved labeling accompanying the product is prohibited. Use after July 31, 2020 is prohibited.

### **List of Cancelled Products:**

- **BASF, Engenia**--EPA Registration Number 7969-345
- **Bayer, Xtendimax with VaporGrip**--EPA Registration Number 524-6 17
- **Corteva, FeXapan**--EPA Registration Number 352-9 13

On the afternoon of June 9, the NDDA released a statement concurring with EPA's order. In addition, they reminded applicators that, under State 24C labeling, applications beyond June 30 are prohibited. Moving forward, the Plaintiffs in the lawsuit contend that EPA's June 8 order does not comply with the Court's ruling. They will likely seek some additional relief from the Court. At the time of this writing, it is impossible to know what, if anything, this will mean for users of these products.

When the lawsuit was filed, Syngenta had yet to receive a registration for Tavium. It is not named in the court ruling, so Tavium may continue to be used as directed by Federal and State labeling on tolerant soybeans.

BASF, Bayer, Corteva, and Syngenta are all seeking registrations for their products for 2021 and beyond. Again, at the time of this writing, it is impossible to know if these products will be available next season and under what sort of labeling instructions. In the meanwhile, users of Xtend traited soybeans and users of the herbicides designed for them should closely monitor Federal and State directives to stay in compliance with the law.

-Andrew A. Thostenson, Pesticide Program Specialist

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## **DICAMBA: CONSIDERATIONS FOR DICAMBA ALTERNATIVES**

Last week, we submitted a supplemental article to Crop and Pest Report that outlines some of the best alternative herbicide options for difficult-to-control weeds in the case where dicamba cannot be applied to Xtend soybeans. We have received further clarification on the ability to use approved dicamba products, but there may still be the need for alternative products on some of these acres. There are a few points I would like to address in more detail for these products.

We highlighted that Group 14 (PPO-inhibiting) herbicides are one of the best alternatives for many weeds. It is important to remember that using a Group 14 herbicide postemergence will require different application parameters than dicamba. It is not as easy as swapping out a dicamba herbicide for a Group 14 herbicide. Group 14 herbicides are contact herbicides and thus require smaller droplets than systemic herbicides like dicamba and glyphosate. Simply put, you will experience poor weed control if you spray Group 14 herbicides through your Xtend soybean spray nozzles. The adjuvant requirements will also be different than those required for dicamba applications. Best control will be achieved by selecting nozzles that produce smaller droplets, increasing carrier volume, and using full rates of oil adjuvants.

The other factor to keep in mind is that many of these herbicides could also be in limited supply depending on how many acres of Xtend soybean we will actually be able to spray with approved products. If you do choose to or need to use these products, it would be wise to start the process of finding products and adjuvants. Lastly, these Group 14 herbicides are contact herbicides and work best when applied to smaller weeds. Weed control will be best on tough weeds like kochia and waterhemp if they are 2 inches or smaller at application.

NDSU publication "Selecting Spray Nozzles to Reduce Particle Drift (AE1246) can provide more information on nozzle selection based on herbicide choice. The 2020 North Dakota Weed Control Guide (W253) has more information on herbicides for postemergence use in soybean. You can find these publications by searching the NDSU database or contacting your local county agent.

-Joe Ikley, Extension Weed Specialist

