



May 31, 2016

Environmental Protection Agency
Mailcode 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: EPA-HQ-OPP-2016-0187, "Dicamba: New Use on Herbicide-Tolerant Cotton and Soybeans

CropLife America (CLA) is pleased to submit comments on the U.S. Environmental Protection Agency (EPA or Agency)'s Proposed Registration of Dicamba for Use on Dicamba-Tolerant Cotton and Soybeans. Established in 1933, CLA represents the developers, manufacturers, formulators and distributors of plant science solutions for agriculture and pest management in the United States. CLA's member companies produce, sell and distribute virtually all of the vital and necessary crop protection and biotechnology products used by American farmers, ranchers and landowners. CLA's members invest hundreds of millions of dollars in research and testing to support their respective registrations.

CLA Supports EPA's Proposed Approval of Monsanto Company's M1691 Herbicide for Use on Dicamba-Tolerant Soybeans and Cotton

Herbicides help control the many different weeds that can negatively impact crop yield. The use of herbicides helps reduce the cost and environmental footprint of agriculture by facilitating no- and low-tillage farming that reduces run-off and soil erosion, and by reducing the acreage needed to achieve high production levels.

The new use of dicamba for weed control in dicamba-tolerant soybeans and cotton will extend the well-established benefits of herbicide-tolerant cropping systems. It provides a new management tool for overall weed management, including the management of herbicide-resistant weeds. This new use of dicamba is an example of how valuable new weed management tools provide more weed control options for farmers, and slow the selection for resistant herbicide genotypes for other herbicide mechanisms-of-action. Such tools also support the adoption of no-till and conservational tillage practices. As such, the new use of dicamba will help promote the sustainability of crop production in the United States. Therefore, CLA generally supports EPA's proposed approval of dicamba for use on dicamba-tolerant soybeans and cotton. We urge EPA to continue to support product innovation to get new, effective tools in the hands of growers, and pursue safe, proven technologies that growers need.

EPA's Mitigated No-Effect Endangered Species Act (ESA) Analysis is Legally Sound

EPA's registration of M1691 herbicide for use with dicamba-tolerant soybeans and cotton is based on extensive toxicological and ecological effects evaluations. As part of this process, EPA required data on environmental fate, 40 C.F.R. §158.1300; on ecological effects on non-target terrestrial and aquatic



animals, *id.* at §158.630; and on non-target plants, *id.* at §158.660. EPA also specifically focused on potential effects that this new use of dicamba may have on ESA-listed species by conducting a thorough ecological risk assessment. Where, based on its ecological risk assessment, EPA concluded that dicamba's new use would have "no effect" on listed species, it properly concluded its endangered species assessment. In this no-effect determination, EPA took into account multiple label mandates and relied upon maximum exposure scenarios. The conditions mandated by EPA on the product label are legally enforceable under FIFRA, and become part of the proposed registration. EPA also may take into account other conditions on pesticide labels, such as buffer zones. This is entirely appropriate, given that failure to follow the label requirements is unlawful. *Cf. Center for Biological Diversity v. BLM*, No. 10-72356 at *12722 (9th Cir. Oct. 22, 2012) (conservation measures should have been considered as part of the proposed action because that would have made them enforceable under the ESA); 50 C.F.R. §402.02.

Courts have held that mitigation measures or other protections should be taken into account when determining the impact of the proposed action (here the new use of dicamba) on listed species. *See, e.g., Sierra Club v. Van Antwerp*, 661 F.3d 1147 (D.C. Cir. 2011) (finding "no reason why the general principle of taking mitigation into account should not apply to the decision whether the ESA requires formal consultation"); *Selkirk Conservation Alliance v. Forsgren*, 336 F.3d 944, 956 (9th Cir. 2003) ("If a Conservation Agreement is in place, then the reviewing agencies ought to consider it when evaluating the impact of the proposed action [in the ESA context]"); *Sierra Club v. Marsh*, 816 F.2d 1376, 1379-80 (9th Cir. Cal. 1987) (explaining that agency relied upon mitigation to support conclusion that agency action was not likely to jeopardize the species' continued existence); *Center for Biological Diversity v. BLM*, No. 10-72356 at *12739 (9th Cir. Oct. 22, 2012). EPA's authority to reach a mitigated no-effect finding is well-established.

EPA Should Not Adopt Its Proposed Framework for Herbicide Categorization

CLA does not support the categorization scheme proposed by EPA entitled "Herbicide Resistance Categories of Concern and Resistance Management Elements for Use by Risk Managers," on page 10 of the supporting document, "Dicamba DGA: Second Addendum to the Environmental Fate and Ecological Risk Assessment for Dicamba DGA salt and its Degradate, 3,6-dichlorosalicylic acid (DCSA) for the Section 3 New Use on Dicamba-Tolerant Soybean." In particular, CLA is concerned that, because an herbicide is used on an herbicide-tolerant plant produced through biotechnology (genetically engineered or GE) or other breeding methods, it automatically is categorized as a "site of high concern for resistance." This implies that adoption of biotechnology has caused a rapid onset of resistance in weeds. There is nothing inherently different about GE crops such that the EPA should regulate herbicide use on herbicide-tolerant crops any differently than it should for herbicide use on other crops. Herbicide resistance in weeds is not related to how a crop was bred or developed, or if the crop is tolerant, resistant or susceptible to an herbicide. Instead, herbicide resistance is an important issue related more generally to herbicides and their use. As such, CLA urges EPA to eliminate this categorization.



EPA Should Not Adopt a Policy of Prohibiting Tank Mixes

CLA opposes the prohibition of tank mixes included in this proposed registration decision. CLA generally supports the reasoning in the comments submitted by the leaders of the weed science societies (Weed Science Society of America and others) in this docket on this issue. The Weed Science comments cite solid research establishing that tank mixes including two or more effective herbicide mechanisms of action provide a very effective strategy for delaying herbicide resistance. CLA also is concerned about the impact a broad tank mix prohibition will have on agriculture more broadly. If farmers are unable to use tank mixes they would need to apply pesticides individually, costing the farmers time and money and unnecessarily increasing agriculture's carbon footprint.

Access to fields with application equipment can be severely limited by weather events, predicted or not. The window of susceptibility to control specific weed, pest, and disease problems may be very narrow. Application delays caused by weather can allow weeds, diseases, and pest infestations to grow beyond that stage where they can be controlled effectively, with significant negative implications for subsequent crop management and ultimate crop yield. Growers and applicators must take full advantage of each window of opportunity for weed, pest, and disease control, which often means combining pesticide applications in tank mixes, including herbicides, insecticides, and fungicides. For these reasons, CLA asks that EPA not adopt a broad policy prohibiting tank mixes.

360° In-Field Buffer

The proposed label requires a 100 to 220 foot buffer (depending on the rate of dicamba applied) from all outer edges of the treated field less the distance to any of several specified adjacent areas. Requiring such a 360° buffer is impractical for growers and unnecessary for the protection of non-target species. Such a large buffer around the field will significantly limit the area within the field that is allowed to be treated. For example, a grower with a field that has the dimensions of 2,500 feet by 1,250 feet, approximately 72 acres, would need to leave about 25% of the field untreated with dicamba. This untreated portion of the field would become a refuge for glyphosate resistant weeds allowing the population to increase, severely impacting resistance management. To manage that population of resistant weeds, growers would be forced to separately apply alternative herbicides that are potentially less effective and increase the potential for a second herbicide application to the field.

Additionally, the proposed in-field buffer in all directions is unnecessary for protection of non-target species. EPA cites concern over insufficient detail to verify measurements of dicamba volatility as the reason for the proposed 360° buffers. The primary mechanism for off-target movement with dicamba, however, is physical spray drift, not volatility. Therefore, by using the nozzle required on the label that creates large droplets that are less prone to drift, a wind directional buffer will effectively address spray drift when utilizing proper spray volume, equipment ground speed, spray boom height, and spraying under appropriate conditions of wind speed and wind direction.



Finally, CLA encourages EPA, upon request, to expedite the future approval of additional nozzles for use with M1691 herbicide. Allowing additional nozzles that also meet EPA's requirements for Drift Reduction Technology will facilitate this dicamba use and may allow the intended benefits of the new use to be more widely realized.

Thank you for the opportunity to comment on this important docket. Please contact me jcollins@croplifeamerica.org or 202-833-4474 with any questions regarding the comments of CropLife America.

Respectfully,

A handwritten signature in cursive script that reads "Janet E. Collins".

Janet E. Collins, Ph.D.
Senior Vice President Science and Regulatory Affairs