

United States Senate

WASHINGTON, DC 20510

November 14, 2024

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to request that EPA deny the three pending pesticide product applications¹ to re-approve the highly volatile herbicide dicamba that has caused unprecedented drift damage across the country to both U.S. farmers' crops and wild plants.

Since their original two-year experimental approval in 2016, dicamba herbicides sprayed “over-the-top” (OTT) of soybeans and cotton genetically engineered to withstand them have drifted rampantly, damaging many millions of acres of sensitive crops. Dicamba is notorious for its volatility, which enables it to drift hundreds of yards to over a mile, causing fencerow-to-fencerow crop injury. The scale of harm from dicamba drift has been unprecedented: According to North Dakota pesticide expert Andrew Thostenson, voicing the similar opinions of many: “We’ve never observed anything on this scale in this country since we’ve been using pesticides in the modern era.”²

As you know, both the federal courts and EPA itself have repeatedly concluded that dicamba’s prior approvals were legally flawed and caused significant injury to U.S. farmers.

First, in 2020, the U.S. Court of Appeals for the Ninth Circuit held EPA’s dicamba approval unlawful and vacated it.³ In *National Family Farm Coalition v. EPA*, the court held that EPA’s approval violated pesticide law at least six separate ways.⁴ EPA “substantially understated three

¹ See <https://www.regulations.gov/document/EPA-HQ-OPP-2024-0154-0001>; <https://www.regulations.gov/document/EPA-HQ-OPP-2024-0154-0236>; and <https://www.regulations.gov/document/EPA-HQ-OPP-2024-0154-1010>.

² <https://www.dtnpf.com/agriculture/web/ag/crops/article/2017/09/20/state-pesticide-regulators-face-2018>.

³ *National Family Farm Coalition v. EPA*, 960 F.3d 1120 (9th Cir. 2020), available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/06/03/19-70115.pdf>; See media coverage: <https://perma.cc/D6DY-5R2R>; <https://www.bloomberg.com/news/articles/2020-06-03/bayer-s-dicamba-registration-pulled-by-court-on-herbicide-s-risk?embedded-checkout=true>

⁴ *Id.* at 1124 & 1144 (summarizing the holdings).

risks it acknowledged” and “also entirely failed to acknowledge three other risks.”⁵ All of these risks related to dicamba drift harm to farmers’ crops and the environment. The court underscored the “enormous and unprecedented damage” caused by dicamba drift,⁶ and that “EPA refused to quantify or estimate the amount of damage ... or even to admit there was any damage at all.”⁷ The court also concluded that dicamba damage has turned farmer against farmer, and that the record contained “extensive evidence” that dicamba had “torn apart the social fabric of many farming communities.”⁸ Indeed, disputes over dicamba have ended lifelong friendships, led to vandalism, and in one case even resulted in murder.⁹

Second, EPA’s own Inspector General subsequently undertook an investigation resulting in a report concluding that EPA’s 2018 re-approval of dicamba—which it issued despite massive damage in the prior years—was politically tainted and lacking in scientific integrity.¹⁰ Among other findings, the IG report concluded that in the decision EPA did not conduct the required internal scientific peer review and had made omissions from scientific documents.¹¹

Third, despite the court’s vacating of dicamba’s approval as unlawful in summer 2020, EPA rushed to re-approve the dicamba products with a few additional usage restrictions just four months later.¹² Damage due to dicamba persisted and a 2021 EPA memorandum compiled evidence of this, documenting nearly 3,500 reports of dicamba injury that year to more than 80 different crop species, including tomatoes, peppers, grapes, cotton, peanuts, potato, rice, sugarbeet and sweet potato.¹³ EPA cited USDA data concluding that dicamba drift injured as many as 15.6 million acres of non-dicamba-resistant soybeans in 2018 and documented rampant damage to university soybean breeding plots.¹⁴ Dicamba drift has decimated fruit orchards, vegetable farms, and beekeeping operations as well.¹⁵ Numerous farmers have sued dicamba-makers Bayer and BASF over drift damage to their crops, some in a class action that Bayer offered 400 million to settle.¹⁶ Others are individual damages actions: for example Bader Farms of Missouri was awarded \$75 million in damages for devastation of its peach orchard by dicamba drift.¹⁷

⁵ *Id.*

⁶ *Id.* at 1144.

⁷ *Id.* at 1124 & 1138.

⁸ *Id.* at 1143.

⁹ <https://arktimes.com/news/cover-stories/2017/08/10/farmer-vs-farmer?oid=8526754>

¹⁰ <https://www.oversight.gov/sites/default/files/oig-reports/EPA/oversightgovEPA-OIG2021-05-2421-E-0146.pdf>.

¹¹ *Id.*

¹² <https://www.thenewlede.org/2024/01/epa-documents-bayer-political-officials-heavily-involved-in-2020-dicamba-decision/>

¹³ <https://www.regulations.gov/document/EPA-HQ-OPP-2020-0492-0021>, p. 18, Table 3.

¹⁴ <https://www.regulations.gov/document/EPA-HQ-OPP-2020-0492-0003>, at 31, 40-42.

¹⁵ <https://www.thenewlede.org/2024/04/an-herbicide-so-hazardous-that-courts-have-banned-it-twice/>

¹⁶ <https://www.consumernotice.org/legal/dicamba-lawsuits/>; <https://investigatemidwest.org/2020/06/24/in-roundup-settlement-bayer-reaches-400-million-deal-with-farmers-expects-basf-to-pitch-in/>

¹⁷ <https://www.farmprogress.com/farm-operations/court-sides-with-peach-farmer-in-dicamba-drift-case>

EPA's assessment and other reports document widespread damage to natural areas as well, including a National Wildlife Refuge.¹⁸ An Illinois nonprofit that has monitored herbicide damage for six years has documented an alarming rise in sick and dying trees throughout the state, and frequently detected dicamba residues in stricken trees.¹⁹ Alarmingly, the EPA's report admitted dicamba drift may have harmed federally protected endangered species in at least 63 different counties across 16 states.²⁰

Faced with this extensive evidence, EPA announced in a press release that it was no longer sure "whether over-the-top dicamba can be used in a manner that does not pose unreasonable risks to non-target crops and other plants, or to listed species and their designated critical habitats."²¹ Yet still EPA did not act then to cancel the dicamba registrations.

Finally, in February 2024, a second federal court, the U.S. District Court for the District of Arizona, reviewing the same plaintiffs' renewed challenge to the subsequent 2020 registration, again found EPA's decision to approve dicamba unlawful, and again vacated it.²² EPA did not appeal that decision.

The same companies that manufacture dicamba have again applied for re-registration this year. Nearly every year since 2016, EPA has made multiple attempts to mitigate this damage through imposing progressively tighter usage restrictions, but these efforts have failed. It is now abundantly clear that dicamba cannot be "fixed." A few tweaks on the proposed labels will not solve the drift threats these products pose any more than prior restrictions did. The courts have correctly highlighted that it is not a solution for EPA to issue label instructions that are "difficult if not impossible to follow even for conscientious users," and that in order to be lawful the label instructions must be proven to actually be possible under real world farming conditions.²³ Dicamba products simply cannot be used without causing unreasonable adverse effects. And EPA has itself identified numerous safer alternatives for farmers' weed management needs.²⁴

¹⁸ L. Knuffman et al. (2020). Drifting Toward Disaster: How Dicamba Herbicides are Harming Cultivated and Wild Landscapes. National Wildlife Federation, Prairie Rivers Networks, Xerces Society for Invertebrate Conservation. <https://www.xerces.org/publications/scientific-reports/drifting-toward-disaster>.

¹⁹ K. Erndt-Pitcher & M. Kemper (2024). Hidden in Plain Sight, Prairie Rivers Network, <https://prairierivers.org/front-page/2024/08/report-documents-widespread-damage-to-illinois-trees-in-due-to-herbicide-drift/>.

²⁰ <https://www.regulations.gov/document/EPA-HQ-OPP-2020-0492-0021> at p. 17-18.

²¹ <https://www.epa.gov/ingredients-used-pesticide-products/dicamba-2021-report-dicamba-incidents>

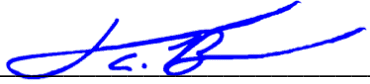
²² *Center for Biological Diversity v. EPA*, __ F.4th __, 2024 WL 455047 (D. Ariz. February 6, 2024). See media coverage: <https://www.theguardian.com/environment/2024/feb/07/us-weedkiller-ban-dicamba-epa>; <https://www.reuters.com/world/us/us-court-cancels-approvals-widely-used-dicamba-weedkillers-2024-02-07/>

²³ *NFFC*, 960 F.3d at 1124, 1140-42.

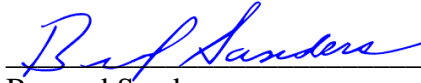
²⁴ <https://www.regulations.gov/document/EPA-HQ-OPP-2016-0187-0966>, pp. 13-15.

For all these reasons and to avoid irreparable harm to U.S. farmers, we therefore urge EPA to reject the 2024 pending applications and not again make the mistake of approving dicamba products for this use.

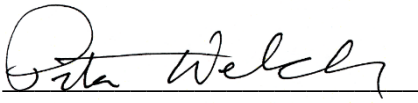
Sincerely,



Cory A. Booker
United States Senator



Bernard Sanders
United States Senator



Peter Welch
United States Senator