

Comment of the Save Our Crops Coalition  
Docket Nos. EPA-HQ-OPP-2012-0545, EPA-HQ-OPP-2012-0492

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SAVE OUR CROPS COALITION  
[Docket Nos. EPA-HQ-OPP-2012-0545, EPA-HQ-OPP-2012-0492]

Friday, September 21, 2012

ELECTRONIC SUBMISSION

**RE: Pesticide Products; Receipt of Applications to Register New Uses**

## Summary

The **Save Our Crops Coalition (SOCC)** is a grassroots coalition of farm interests organized for the specific purpose of preventing injury to non-target crops from exposure to 2,4-D and dicamba. SOCC does not oppose advances in plant technology, particularly genetic modification, but does oppose actions that would result in substantial injury to non-target crops and to the habitats necessary for their pollinators.

Non-target plant damage associated with herbicide spray drift and volatilization is a major concern for specialty crop growers and processors. Credible estimates project significant increases in the amount of dicamba that will be applied upon the introduction of dicamba tolerant crops. Dicamba, because of its potential to drift and volatilize, has proven to be one of America's most dangerous herbicides for non-target plant damage.

Thus, SOCC respectfully submits the following comment regarding the receipt of applications to register new uses for dicamba on dicamba tolerant crops submitted by Monsanto and BASF. This comment requests the Environmental Protection Agency (EPA) withhold registration of these new uses until effective measures are in place to protect against non-target plant damage.

## Commenter

SOCC represents nearly every segment of American agriculture, from growers to processors, both conventional and organic. All SOCC growers cultivate specialty crops, but they also cultivate significant acreages of major agronomic crops, like corn and soybeans. SOCC is over 2,000 growers strong, including grower organizations such as the Indiana Vegetable Growers Association and the Ohio Produce Growers and Marketers Association, and is supported by major processors like Red Gold.

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## Factual Background

### Drift and Volatilization

Due to the potential for crop injury, pesticide spray drift and volatilization from agronomic crops is a major concern for specialty crop growers and processors. Spray drift is the airborne movement of pesticide spray particles to a non-target site. Spraying during windy conditions or using nozzles or pressures that result in the creation of fine spray particles increase the risk of spray drift. Volatilization is the airborne movement of pesticide vapor to a non-target site. Volatilization occurs when a pesticide is applied to a target site, subsequently evaporates, and moves off-target. The calm windless conditions that minimize drift, ironically, only increase the potential for volatilization.

All pesticides may have harmful effects on non-target crops if they drift or volatilize away from their intended areas of application; however, dicamba has proven especially prone to cause damage.<sup>1</sup> A survey of state pesticide control officials listed dicamba as the pesticide third most commonly involved in drift incidents for two years in a row.<sup>2</sup> This incidence of drift damage far outpaces the relative use of dicamba. Dicamba does not even make the list of the top 25 most commonly applied

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<sup>1</sup> Sciumbaro, Audie S., et al. *Determining Exposure to Auxin-Like Herbicides. I. Quantifying Injury to Cotton and Soybean*, Weed Technology, Vol. 18, 1125-1134 (2004).

<sup>2</sup> *2005 Pesticide Drift Enforcement Survey Report*, Association of American Pesticide Control Officials (2005), available at <http://aapco.ceris.purdue.edu/doc/surveys/DriftEnforce05Rpt.html>

pesticide active ingredients.<sup>3</sup> Drift concerns have led some states to enact safeguards, such as requiring the use of lower volatility formulations, restrictions on application timing, and even bans on use.<sup>4</sup> Thus, SOCC regards dicamba as one of America's most dangerous herbicides for non-target plant damage.

Dicamba tolerant crops heighten drift and volatilization concerns. The introduction of dicamba tolerant crops is anticipated to increase the amount of dicamba that will be used, especially in soybean producing regions. Because these regions also produce substantial acreages of broadleaf crops that are sensitive to dicamba, the environmental impacts in these regions are anticipated to be especially intense.

The introduction of dicamba tolerant crops would also permit applications of dicamba weeks later in the growing season. Applications at this time of year occur when other crops are 'leafed out,' further increasing the risk of non-target damage.<sup>5</sup> High temperatures also substantially increase the potential for herbicide volatilization.<sup>6</sup> These risks are particularly alarming in the case of dicamba, because dicamba causes substantial plant damage effects at very low application rates, and is prone to volatilize at high temperatures.

#### **Dicamba Drift Has Substantial Harmful Effects at Very Low Application Rates**

Researchers at the Ohio State University Department of Horticulture and Crop Science conducted a study on the effect of simulated dicamba drift and volatilization on tomatoes grown for processing.<sup>7</sup> Their objective was to quantify the impact of low rates of dicamba on broadleaf crops with respect to plant injury and the potential for yield losses.

Their conclusions are startling. Simulated dicamba drift and volatilization caused tomato bloom to "abort." Applications of dicamba at levels as low as 1/300th of the soybean field rate caused statistically significant losses of tomato crops. The late drift of dicamba, during bloom, caused a 17-77% reduction in marketable fruit when applied at 1/100th of the field rate. *See Figure 1, below.*

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<sup>3</sup> *Pesticides Industry Sales and Usage: 2006 and 2007 Market Estimates*, EPA (Feb. 2011) available at [http://www.epa.gov/opp00001/pestsales/07pestsales/market\\_estimates2007.pdf](http://www.epa.gov/opp00001/pestsales/07pestsales/market_estimates2007.pdf).

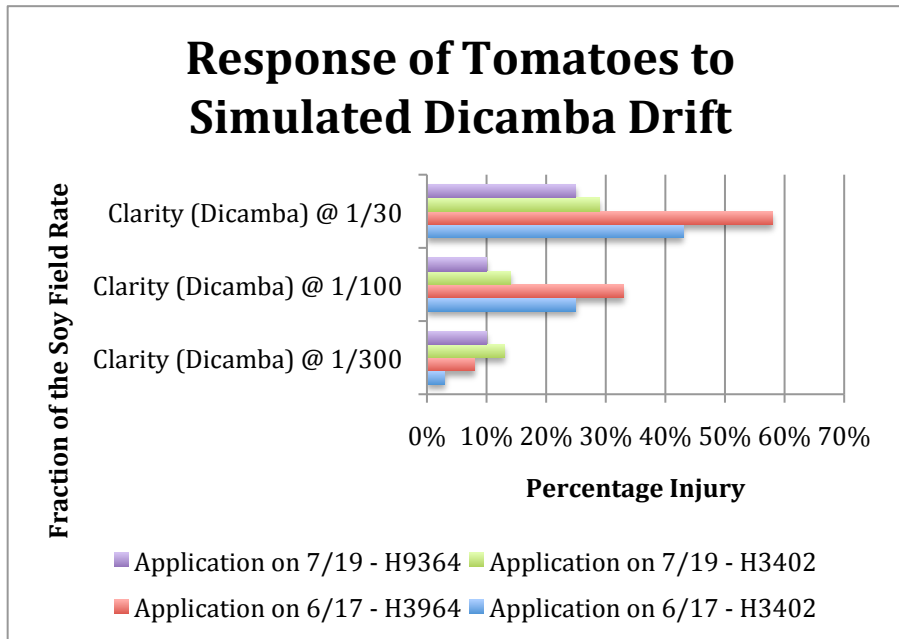
<sup>4</sup> 4 Tex. Admin. Code § 7.50 (2011); Or. Admin. R. 603-057-0301 (2012); Wash. Admin. Code 16-228-1250 (2012)

<sup>5</sup> *Determining Exposure to Auxin-Like Herbicides. I. Quantifying Injury to Cotton and Soybean.*

<sup>6</sup> Atkins, Peter and Loretta Jones, *Chemical Principles: The Quest for Insight*, 310-311 (4th ed. 2008).

<sup>7</sup> Doohan, Doug and Koch, Tim, *Effect of Simulated Dicamba and 2, 4-D Drift on Processing Tomatoes*, Ohio State University/OARDC (2010).

Figure 1.



### Effect of Dicamba Tolerant Crops on Herbicide Use

The rationale presented by Monsanto for MON-87708-9 Soybeans, or dicamba tolerant soybeans, is that they would provide another weed management tool for farmers, because they would offer, "... an option to delay or prevent further resistance to glyphosate and other critically important soybean herbicides, in particular, herbicides in the ALS and PPO class of chemistry..."<sup>8</sup> Thus, dicamba tolerant crops represent a replacement for, or complement to, glyphosate tolerant crops, because the widespread use of glyphosate has contributed to glyphosate resistant weed populations. Presumably, Monsanto will present this rationale for other dicamba tolerant crops.

The desirability of genetically modified crops with a tolerance to herbicides other than glyphosate is anticipated to greatly increase the use of dicamba tolerant crops and dicamba. Regrettably, no federal agency has projected how the introduction of dicamba tolerant crops might increase the amount of dicamba used.

Monsanto's own petition to USDA for non-regulated status of MON-87708-9 Soybeans projects, upon peak adoption, dicamba use will approximately double its 1994 peak historical use level, or reach about 25 million pounds annually.<sup>9</sup> However, it should be noted, the use of dicamba has declined precipitously from its peak 1994 level.

<sup>8</sup> *Monsanto Petition for Determination of Nonregulated Status of Event MON 87708*, at 5.

<sup>9</sup> *Monsanto Petition for Determination of Nonregulated Status of Event MON 87708*, at 210-211.

What Monsanto's petition does not indicate is the rate of change in dicamba use from current use levels. This omission is particularly glaring given the intensity of the rate of sudden change. The latest figures place the amount of dicamba applied at about 2.7 million pounds annually.<sup>10</sup> Monsanto's projected use pattern would represent an approximately 925% increase in pounds applied over current levels, an almost 250% increase in the total acreage treated, and a 5660% increase in soybean acreage treated.<sup>11</sup> Such an increase would represent a dramatic shift in the utilization of an herbicide both in total pounds applied and in total acreage treated. Even the increase in the use of glyphosate upon the introduction glyphosate tolerant crops, an increase of almost 600% in pounds applied, would be eclipsed by this shift in use.<sup>12</sup>

### Proximity of Agronomic Crop Acreage to Broadleaf Crop Acreage in the Midwest

The map, below, produced by USDA's CropScape, is a close-up of a portion of Monroe County, Michigan.<sup>13</sup> Growers in Monroe County cultivate fruit and vegetable crops in proximity to major agronomic crops like soybeans. This proximity is representative of the Midwest generally. The large grey-pink portion in the middle of the map is a tomato field surrounded by corn and soybean fields. Tomatoes are a broadleaf crop. See Figure 2.

As noted above, dicamba has substantial harmful effects on unmodified broadleaf crops even at very low applications rates, and because dicamba tolerant crops will be grown in such close proximity to unmodified broadleaf crops like tomatoes, the potential for non-target plant damage caused by drift and volatilization is great.

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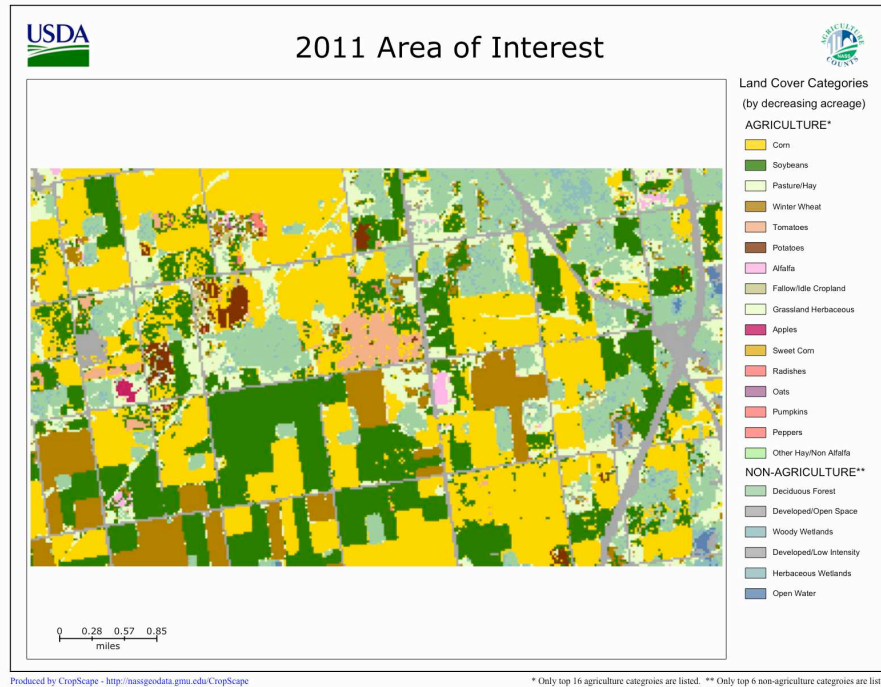
<sup>10</sup> *Monsanto Petition for Determination of Nonregulated Status of Event MON 87708*, at 198.

<sup>11</sup> *Monsanto Petition for Determination of Nonregulated Status of Event MON 87708*, at 223-224.

<sup>12</sup> Gianessi, L. P. and N. Reigner, *Pesticide Use in U.S. Crop Production: 2002 with Comparison to 1992 and 1997*, (2006) available at: <http://www.croplifefoundation.org/Documents/PUD/NPUD%202002/Fung%20&%20Herb%202002%20Data%20Report.pdf>

<sup>13</sup> *2011 Area of Interest*, USDA/NASS (Apr. 14, 2012) available at: <http://nassgeodata.gmu.edu/CropScape/>

Figure 2.



## Discussion

### Statutory and Regulatory Authority

The Federal Insecticide Fungicide and Rodenticide Act (FIFRA) requires EPA to regulate the sale and use of pesticides in the United States through registration and labeling of pesticide products.<sup>14</sup> The sale of any pesticide is prohibited unless it is registered and labeled.<sup>15</sup> EPA is directed to restrict the use of pesticides as necessary to prevent unreasonable adverse effects on people and the environment, taking into account the costs and benefits of various pesticide uses.<sup>16</sup> Under FIFRA, the term “environment” includes “all plants.”<sup>17</sup>

Monsanto and BASF have submitted applications to register new uses for pesticide products containing the currently registered active ingredient, dicamba, and EPA has noticed receipt of these applications.<sup>18</sup> Monsanto has applied to register dicamba for use on dicamba tolerant soybeans.<sup>19</sup> BASF has applied to register

<sup>14</sup> 7 U.S.C. §136 *et seq.*

<sup>15</sup> 7 U.S.C. §§136a(a), 136a(c)(5)(B).

<sup>16</sup> 7 U.S.C §136a(a).

<sup>17</sup> 40 C.F.R. §158.130(e)(1).

<sup>18</sup> *Pesticide Products; Receipt of Applications to Register New Uses*, EPA, 77 Fed. Reg. 50686 (Aug. 22, 2012), available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-22/pdf/2012-20666.pdf>

<sup>19</sup> *Id.*, at 50687.

dicamba for use on dicamba tolerant soybeans and conventional crops.<sup>20</sup> EPA may approve an application for a registration of a pesticide product whose active ingredients are contained in other registered pesticide products only if the agency determines, among other things, approval of the application would not significantly increase the risk of unreasonable adverse effects on the environment.<sup>21</sup>

### **Risk of Unreasonable Adverse Effects on the Environment**

The registration of dicamba on dicamba tolerant crops, without effective measures to mitigate the effects of non-target plant damage, would significantly increase the risk of unreasonable adverse effects on the environment. The new pattern of use for dicamba on dicamba tolerant crops significantly increases the risks of non-target plant damage caused by drift and volatilization, and, thus, the risk of unreasonable adverse effects on the environment. Therefore, SOCC requests that EPA withhold registration of the new uses of dicamba on dicamba tolerant crops until effective measures are in place to protect against non-target plant damage.

The new pattern of use for dicamba on dicamba tolerant crops significantly increases the risk of non-target plant damage. Monsanto's own projections indicate significant growth in the use of dicamba upon the introduction of dicamba tolerant crops, and such growth is likely to occur in areas sensitive to dicamba drift and volatilization damage. Moreover, the new use pattern of dicamba on dicamba tolerant crops would permit applications of dicamba weeks later in the growing season. Applications later in the growing season, given the higher temperatures of this time of year, further increase the risk of herbicide volatilization, and of plant damage effects while sensitive crops are 'leafed out.'

Monsanto's own projections estimate a 925% increase in the amount of dicamba to be applied upon introduction of dicamba tolerant soybeans.<sup>22</sup> Because dicamba has proven especially prone to drift and volatilize, a 925% increase in the amount of dicamba applied could be expected to have devastating effects on non-target plants.<sup>23</sup> Dicamba drift and volatilization, even at extremely low application rates, significantly affects broadleaf crop yields.<sup>24</sup> Because major agronomic crops like soybeans are grown in proximity to broadleaf crops, throughout the Midwest and

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<sup>20</sup> *Id.*, at 50688.

<sup>21</sup> 40 C.F.R §152.113(a)(2)

<sup>22</sup> *Monsanto Petition for Determination of Nonregulated Status of Event MON 87708*, at 223-224.

<sup>23</sup> *2005 Pesticide Drift Enforcement Survey Report*, Association of American Pesticide Control Officials (2005), available at <http://aapco.ceris.purdue.edu/doc/surveys/DriftEnforce05Rpt.html>; *Pesticides Industry Sales and Usage: 2006 and 2007 Market Estimates*, EPA (Feb. 2011) available at

[http://www.epa.gov/opp00001/pestsales/07pestsales/market\\_estimates2007.pdf](http://www.epa.gov/opp00001/pestsales/07pestsales/market_estimates2007.pdf)

<sup>24</sup> Doohan, Doug and Koch, Tim, *Effect of Simulated Dicamba and 2, 4-D Drift on Processing Tomatoes*, Ohio State University/OARDC (2010).

other areas, it is likely the adverse environmental effects in such areas will be especially intense. Given that dicamba causes yield losses at extremely low application rates and has proven prone to drift and volatilize, a 925% increase in amount of herbicide applied would significantly increase the risk of unreasonable adverse effects on the environment.

Modifications to the timing of the application window further increase the risk. The current dicamba label only permits post-emergent use where soybeans are less than 10 inches tall or have not begun to bloom. Monsanto's petition to USDA anticipates that most post-emergent use would occur before growth stage V4.<sup>25</sup> This anticipated use pattern increases the period within which dicamba could be applied by approximately 20 days. The average high temperatures in sensitive areas over such a time period can vary by nearly 10 degrees Fahrenheit.<sup>26</sup> Because dicamba readily volatilizes at higher temperatures, applications at such time create conditions ripe for volatilization and off-target movement.<sup>27</sup> Studies have shown dicamba drift and volatilization later in the growing season cause significant reductions in marketable fruit at extremely low application rates.<sup>28</sup> Thus, applications later in the growing season further heighten the risk of adverse environmental effects.

The registration of dicamba on dicamba tolerant crops, without effective measures in place to mitigate the effects of non-target plant damage, would significantly increase the risk of unreasonable adverse effects on the environment. The new pattern of use for dicamba on dicamba tolerant crops significantly increases the risks of non-target plant damage caused by drift and volatilization, and, thus, the risk of unreasonable adverse effects on the environment. Therefore, SOCC requests that EPA withhold registration of new uses of dicamba on dicamba tolerant crops until effective measures are in place to protect against non-target plant damage.

#### **The Use of Dicamba DGA Salt and Generics on Dicamba Tolerant Crops**

The use of dicamba formulations other than those with the lowest possible drift and volatility potential is especially concerning to SOCC. Unfortunately, Monsanto has sought registration of not merely the low volatility formulations subject to this registration action, those commonly known as Engenia, but also the more drift prone and volatile DGA salt formulation, Clarity, in a still pending registration

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<sup>25</sup> *Monsanto Petition for Determination of Nonregulated Status of Event MON 87708*, at 217-218.

<sup>26</sup> *Monsanto Petition for Determination of Nonregulated Status of Event MON 87708*, at 220.

<sup>27</sup> *Dicamba Technical Fact Sheet*, National Pesticide Information Center - Oregon State University (2012), available at [http://npic.orst.edu/factsheets/dicamba\\_Tech.pdf](http://npic.orst.edu/factsheets/dicamba_Tech.pdf)

<sup>28</sup> *Effect of Simulated Dicamba and 2, 4-D Drift on Processing Tomatoes*.



action.<sup>29</sup> Clarity is the same formulation examined by researchers at Ohio State, as noted above, that caused a 17-77% reduction in marketable fruit, when applied at 1/100th of the field rate.<sup>30</sup> SOCC is also very concerned about the use of generic formulations of dicamba on dicamba tolerant crops in contravention of standing label requirements.

The costs of developing new herbicide chemistries are significant, and these costs will undoubtedly be borne by consumers, the growers and applicators of Monsanto and BASF's new herbicides. Thus, there will likely exist an economic incentive for growers and applicators to use the cheaper Clarity, if it is registered for use on dicamba tolerant crops, or other generic formulations of dicamba. SOCC believes this economic incentive poses a grave and unnecessary risk of unreasonable adverse effects on the environment.

EPA is precluded from considering the availability of alternatives within its registration analysis. As FIFRA states, "Where two pesticides meet the requirements... one should not be registered in preference to the other."<sup>31</sup> Therefore, regrettably, SOCC cannot request EPA deny the new use registration for Clarity solely upon the basis that the Engenia herbicide is available and likely poses less significant risks. Instead, SOCC must request that EPA deny registration for the new use of Clarity on dicamba tolerant crops because, as noted above, the registration of Clarity would significantly increase the risk of unreasonable adverse effects on the environment.

SOCC also requests that EPA take all necessary action to prevent the use of generic formulations of dicamba on dicamba tolerant crops. EPA should consider the addition of a precautionary label statement for all generic forms of dicamba that explicitly states that use on dicamba tolerant crops is prohibited.<sup>32</sup> Moreover, to ensure that market forces discourage the use of the generic dicamba on dicamba tolerant crops, SOCC would suggest EPA obtain assurances from Monsanto and BASF that they will tie their sales of dicamba tolerant seeds to their sales of herbicide.

SOCC is uncertain about the risk posed by the new Engenia herbicide, and therefore does not preclude the possibility that effective measures could be adopted that protect against the non-target plant damage caused by this formulation. Unfortunately, Monsanto and BASF have not included information regarding this formulation in any USDA or EPA docket. Monsanto did not discuss the drift or

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<sup>29</sup> *Pesticide Products; Registration Applications*, 75 Fed. Reg. 51045 (Aug. 18 2012), available at: <https://www.federalregister.gov/articles/2010/08/18/2010-20321/pesticide-products-registration-applications>

<sup>30</sup> *Effect of Simulated Dicamba and 2, 4-D Drift on Processing Tomatoes*.

<sup>31</sup> 7 U.S.C. §136a(c)(5)(D)

<sup>32</sup> 40 C.F.R. §§ 156.80, 156.85(a)

volatility potential of Engenia or even mention its availability within its petition to USDA for non-regulated status of MON-87707-9 Soybeans.

### Mitigation of Adverse Environmental Effects

SOCC's mission is to prevent injury to non-target plants. SOCC seeks to ensure that should dicamba be used, it is used in a responsible manner. Despite the release of promising information by Monsanto and BASF demonstrating some reduction in the drift and volatility potential of Engenia, SOCC still regards additional mitigation measures as necessary to protect against drift and volatilization damage to non-target plants caused by this new pattern of use.<sup>33</sup>

For instance, even if the claims Monsanto and BASF have made are true, SOCC strongly believes that a modification of application factor restrictions will be necessary. SOCC regards specific protections for susceptible plants as vital. EPA should consider border and buffer requirements to protect sensitive crops.<sup>34</sup>

SOCC would also suggest a reasonable recordkeeping requirement for applicators of Engenia. It has been the experience of the SOCC membership that when drift and volatilization events occur there is often little documentation concerning the time and manner of suspect applications. Recordkeeping requirements could resemble those currently in place for restricted use pesticides, and could be accomplished through regulations now in place.<sup>35</sup>

These suggestions are merely an outline for EPA to consider while reviewing these applications for new uses. SOCC also intends to present comments to EPA once it has had the opportunity to review EPA's risk assessment and its proposed decision.<sup>36</sup> At such time, SOCC may present a more detailed description of the mitigation measures we deem necessary and may suggest additional measures for consideration by EPA.

### Voluntary Submission of EPA to NEPA Procedures

Although courts have consistently recognized that EPA procedures under enabling legislation as functionally equivalent to the NEPA process, and thus, exempt from the procedural requirements of NEPA, EPA has developed a policy whereby it may voluntarily submit itself to NEPA procedures where NEPA analysis would be

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<sup>33</sup> *BASF Presents: The Science Behind the Future of Weed Control*, BASF (2012), available at: [http://pub.psbpr.com/basf/Comm-Classic-Media-Kit-2012/content/assets/resources/Rea\\_Science-Future-Weed-Control.pdf](http://pub.psbpr.com/basf/Comm-Classic-Media-Kit-2012/content/assets/resources/Rea_Science-Future-Weed-Control.pdf).

<sup>34</sup> *Pesticide Registration (PR) Notice 2009-X Draft: Pesticide Drift Labeling*, EPA (Oct. 2009), available at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPP-2009-0628-0002> at 7.

<sup>35</sup> 7 C.F.R. § 110.3; 40 C.F.R. § 152.171

<sup>36</sup> *Public Participation Process for Registration Actions*, EPA (Mar. 31, 2010), available at <http://www.epa.gov/pesticides/regulating/public-participation-process.html>

beneficial.<sup>37</sup> SOCC believes the preparation of an environmental impact statement that comprehensively considers the environmental effects of herbicide use within the dicamba tolerant cropping system would prove beneficial to EPA in its consideration of mitigation measures, and might assist other federal agencies. Therefore, SOCC requests EPA voluntarily submit to NEPA procedures.

Among the criteria that EPA considers in making a determination to submit itself voluntarily to NEPA procedures are “the potential for using an EA or EIS to comprehensively address large-scale ecological impacts, particularly cumulative effects” and “the potential for improved coordination with other federal agencies taking related actions.”<sup>38</sup>

The availability of cheaper generic formulations creates an economic incentive that makes noncompliance with federal pesticide law increasingly likely, yet the scope of the new use registration action makes it unlikely EPA will consider the noncompliant use of other distinct generic formulations. Given the substantial acreages of cropland that could be affected, failure to consider the potential for noncompliance might prevent EPA from comprehensively addressing large-scale ecological impacts.

EPA is also precluded from considering the availability of alternative herbicides within its registration analysis, whereas the “heart” of the NEPA environmental impact statement is the consideration of alternatives.<sup>39</sup> Given the substantial acreages of cropland that could be affected, failure to consider alternative herbicides might prevent EPA from comprehensively addressing large-scale ecological impacts. SOCC believes that preparation of an environmental impact statement that comprehensively considers herbicide use within the dicamba tolerant cropping system would prove beneficial to EPA as it considers additional restrictions on generics and mitigation measures for Clarity and Engenia.

Though voluntary compliance with NEPA might prove beneficial to EPA, it might also prove beneficial to USDA as it considers related actions. USDA has broad authority to regulate plant pests. “Plant pest” is broadly defined, in part, as “. . . any infectious agent or substances which can *directly or indirectly* injure or cause disease or damage in or to any plants or parts thereof, or any processed, manufactured or other products of plants” (emphasis added).<sup>40</sup> Monsanto has petitioned USDA for a determination that dicamba tolerant soybeans do not present a plant pest risk and therefore should not be subject to the applicable plant pest

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<sup>37</sup> *Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents*, EPA, 63 Fed. Reg. 58045 (Oct. 29, 1998), available at: <http://www.gpo.gov/fdsys/pkg/FR-1998-10-29/pdf/98-29019.pdf>

<sup>38</sup> *Id.*, at 58046.

<sup>39</sup> 7 U.S.C. §136a(c)(5)(D), 40 C.F.R. §1500.1(c)

<sup>40</sup> 7 C.F.R. §340.1.

regulations.<sup>41</sup> A petition for non-regulated status is required to describe, “...(K)nown and potential differences from the unmodified recipient organism that would substantiate that the regulated article is unlikely to pose a greater plant pest risk than the unmodified organism from which it was derived.” Such a description should include, in the relevant part, “...effects of the regulated article on nontarget organisms, (and) indirect plant pest effects on other agricultural products...”<sup>42</sup> SOCC believes that preparation of an environmental impact statement that comprehensively considers herbicide use within the dicamba tolerant cropping system might assist USDA in its preparation of a plant pest risk assessment.

USDA also must comply with NEPA procedures. USDA must prepare, at the very least, an environmental assessment, or perhaps even an environmental impact statement, for any determination of nonregulated status for MON-87708-9 Soybeans.<sup>43</sup> SOCC has requested USDA prepare an environmental impact statement. SOCC believes EPA preparation of an environmental impact statement that comprehensively considers herbicide use within the dicamba tolerant cropping system might assist USDA in its efforts to comply with NEPA procedures.

SOCC requests EPA voluntarily submit to NEPA procedures. SOCC believes the preparation of an environmental impact statement that comprehensively considers the environmental effects of herbicide use within the dicamba tolerant cropping system would prove beneficial to EPA in its consideration of mitigation measures, and might assist other federal agencies.

## Conclusion

On September 11, 2012, SOCC announced the successful conclusion of discussions with Dow AgroSciences (Dow) regarding its 2,4-D tolerant cropping system. SOCC was satisfied that Dow had adopted effective measures to protect against non-target plant damage associated with the introduction of 2,4-D tolerant crops. SOCC was also impressed with Dow’s 2,4-D Choline Salt formulation. Only 2,4-D Choline Salt, the lowest volatility 2,4-D formulation available, would be approved for use on 2,4-D tolerant crops, and Dow has committed to strongly discourage the unlawful use of older, cheaper, highly volatile generic formulations on 2,4-D tolerant crops.

SOCC believes that Monsanto and BASF begin on a different regulatory footing than Dow. Dow recognized the potential for older, cheaper forms of 2,4-D to drift and volatilize, and developed substantial protections to prevent the use of such formulations. Dow sought registration for only its lowest volatility formulation of 2,4-D, and Dow developed, made public, and delivered to USDA, research detailing the reduced drift and volatilization potential of its new low volatility herbicide.

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<sup>41</sup> 7 C.F.R. §340.6

<sup>42</sup> 7 C.F.R. §340.6(c)

<sup>43</sup> 42 U.S.C. §4332(2)(C); 40 C.F.R. §1501.4(2)(B)

Monsanto and BASF, on the other hand, have sought the registration of both Engenia and the older, more volatile Clarity formulation. Monsanto and BASF have failed to provide research demonstrating drift and volatility reductions of either Clarity or Engenia, and have not released the proposed label language for either herbicide. Neither Monsanto nor BASF have publicly presented any strategy to mitigate adverse environmental effects of either herbicide, through label language, through limitations on application timing, or through the competitive pricing of lower volatility formulations. Furthermore, Monsanto and BASF have not proposed recordkeeping practices to ensure that applicators are aware and have documented application location, timing, and windspeed before they apply dicamba.

SOCC remains hopeful that discussions will commence with Monsanto and BASF, and will ultimately reach a mutually beneficial conclusion, but, for now, SOCC must request EPA withhold registration of new uses of dicamba on dicamba tolerant crops until effective measures are in place to protect against non-target plant damage. The potential for non-target plant damage is just too great.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_

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