Hello Northeast Ohio Counties!

We’ve had some great hay making weather this week, and more on the way this weekend. Lots of forages are going up, but you may be noticing some lighter crops than normal. We’ve got some good articles this week to help you make up for light first cuttings.

After the last couple of years I can’t believe it, but we could use some rain. Some seeds need a shot of moisture to get out of the ground, but the crops generally look good.

Have a great week!

Lee Beers  Andrew Holden  Angie Arnold
Trumbull County  Ashtabula County  Portage County
Extension Educator  Extension Educator  Extension Educator
News Release - EPA Offers Clarity to Farmers in Light of Recent Court Vacatur of Dicamba Registrations


WASHINGTON (June 8, 2020) — Today, the U.S. Environmental Protection Agency (EPA) issued a key order providing farmers with needed clarity following the Ninth Circuit Court of Appeals’ June 3, 2020 vacatur of three dicamba registrations. Today’s cancellation order outlines limited and specific circumstances under which existing stocks of the three affected dicamba products can be used for a limited period of time. EPA’s order will advance protection of public health and the environment by ensuring use of existing stocks follows important application procedures.

“At the height of the growing season, the Court’s decision has threatened the livelihood of our nation’s farmers and the global food supply,” said EPA Administrator Andrew Wheeler. “Today’s cancellation and existing stocks order is consistent with EPA’s standard practice following registration invalidation, and is designed to advance compliance, ensure regulatory certainty, and to prevent the misuse of existing stocks.” EPA’s order will mitigate some of the devastating economic consequences of the Court’s decision for growers, and particularly rural communities, at a time they are experiencing great stress due to the COVID-19 public health emergency.

Details of the Order

EPA’s order addresses sale, distribution, and use of existing stocks of the three affected dicamba products – XtendiMax with vapor grip technology, Engenia, and FeXapan.

1. Distribution or sale by any person is generally prohibited except for ensuring proper disposal or return to the registrant.
2. Growers and commercial applicators may use existing stocks that were in their possession on June 3, 2020, the effective date of the Court decision. Such use must be consistent with the product’s previously-approved label, and may not continue after July 31, 2020.

Background

On June 3, 2020, the Ninth Circuit Court of Appeals issued an order vacating EPA’s pesticide registrations containing the active ingredient dicamba: Xtendimax with Vaporgrip Technology (EPA Reg. No. 524-617); Engenia – (EPA Reg. No. 7969-345); and FeXapan – (EPA Reg. No. 352-913).

Dicamba is a valuable pest control tool that farmers nationwide planned to use during the 2020 growing season. Since the Court issued its opinion, the agency has been overwhelmed with letters and calls from farmers citing the devastation of this decision on the millions of acres of crops, millions of dollars already invested by farmers, and threat to America’s food supply.
Dicamba takes another blow: Court of Appeals vacates dicamba registration

By: Peggy Hall
Source: https://farmoffice.osu.edu/blog/thu-06042020-901pm/dicamba-takes-another-blow-court-appeals-vacates-dicamba-registration

Dicamba has had its share of legal challenges, and a decision issued yesterday dealt yet another blow when the Ninth Circuit Court of Appeals vacated the product’s registration with the U.S. EPA. In doing so, the court held that the EPA’s approval of the registration violated the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), which regulates the use of herbicides and other chemicals in the U.S. Here’s a summary of how the court reached its decision and a few thoughts on the uncertainty that follows the opinion.

The challenge: EPA’s approval of three dicamba products

We first have to step back to 2016, when the EPA approved three dicamba-based products--Monsanto’s XTendiMax, DuPont’s FeXapan, and BASF’s Engenia—as conditional use pesticides for post-emergent applications in 34 states, including Ohio. Although dicamba has been around for years, the approval came after the companies reformulated dicamba to make it less volatile and in anticipation of the development of dicamba tolerant soybean and cotton seeds. The agency conducted a risk assessment and concluded that if used according to the label restrictions, the benefits of the dicamba products outweighed “any remaining minimal risks, if they exist at all.” The EPA also provided that the registrations would automatically expire if there was a determination of an unacceptable level or frequency of off-site dicamba damage.

Before the conditional registrations were set to automatically expire in late 2018, the EPA approved requests by Bayer CropScience (previously Monsanto), Cortevo (previously DuPont) and BASF to conditionally amend the registrations for an additional two years. The approval came despite widespread concerns about dicamba drift and damage during the 2017 growing season. To address those concerns, EPA chose not to conduct a new risk assessment and instead adopted additional label restrictions that had been proposed by Monsanto/Bayer to minimize off-field movement of dicamba. Many states added restrictions for dicamba use that exceeded the label restrictions, including banning any use of the product during certain periods.
Several organizations challenged the EPA’s dicamba registration approvals. The National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity, and Pesticide Action Network North America filed suit against the EPA, claiming that the agency violated both FIFRA and the Endangered Species Act in approving the product registrations. Monsanto requested and was granted permission to intervene in the case.

The Ninth Circuit’s review

To approve the request to amend the dicamba registrations, FIFRA required the EPA to make two conclusions: first, that the applicant had submitted satisfactory data related to the proposed additional use of the pesticide and second, that the approval would not significantly increase the risk of unreasonable adverse effects on the environment. The task before the Ninth Circuit Court of Appeals was to review the EPA’s 2018 decision and determine whether there was substantial evidence to support the EPA’s conclusions and amend the registrations.

The conclusion that drew the most attention from the court was the EPA’s determination that amending the dicamba registrations for two years would not cause unreasonable adverse effects on the environment. The court determined that the EPA erred in making this conclusion when it substantially understated several risks of dicamba registration, such as:

- Misjudging by as much as 25% the amount of acreage on which dicamba would be used in 2018.
- Concluding that complaints to state departments of agriculture could have either under-reported or over-reported the actual amount of dicamba damage, when the record clearly showed that complaints understated the amount of damage.
- Failing to quantify the amount of damage caused by dicamba, “or even to admit that there was any damage at all,” despite having information that would enable the EPA to do so.

But that’s not all. The court pointed out that the agency had also “entirely failed to acknowledge other risks, including those it was statutorily required to consider,” such as:

- The risk of substantial non-compliance with label restrictions, which the court noted became “increasingly restrictive and, correspondingly, more difficult to follow” and to which even conscientious applicators could not consistently adhere.
- The risk of economic costs. The court stated that the EPA did not take into account the “virtually certain” economic costs that would result from the anti-competitive effect of continued dicamba registration, citing evidence in the record.
that growers were compelled to adopt the dicamba products just to avoid the possibility of damage should they use non-dicamba tolerant seed.

- The social costs of dicamba technology to farming communities. The court pointed out that a farmer in Arkansas had been shot and killed over dicamba damage, that dicamba had “pitted neighbor against neighbor,” and that the EPA should have identified the severe strain on social relations in farming communities as a clear social cost of the continued registration of the products.

Given the EPA’s understatement of some risks and failure to recognize other risks, the Court of Appeals concluded that substantial evidence did not support the agency’s decision to grant the conditional registration of the dicamba products. The EPA “failed to perform a proper analysis of the risks and resulting costs of the uses,” determined the court. The court did not address the Endangered Species Act issue.

What remedy?

A critical point in the decision is the court’s determination of the appropriate remedy for the EPA’s unsupported approval of the dicamba products. The EPA and Monsanto had asked the court to utilize its ability to “remand without vacatur,” or to send the matter back to the agency for reconsideration. The remedy of “vacatur,” however, would vacate or void the product registrations. The court explained that determining whether vacatur is appropriate required the court to weigh several criteria, including:

- The seriousness of the agency’s errors against the disruptive consequences of an interim change that may itself be changed,
- The extent to which vacating or leaving the decision in place would risk environmental harm, and
- Whether the agency would likely be able to offer better reasoning on remand, or whether such fundamental flaws in the agency’s decision make it unlikely that the same rule would be adopted on remand.

The court’s weighing of these criteria led to its conclusion that vacating the registrations of the products was the appropriate remedy due to the “fundamental flaws in the EPA’s analysis.” Vacating the registrations was not an action taken lightly by the court, however. The judges acknowledged that the decision could have an adverse impact on growers who have already purchased dicamba products for the current growing season and that growers “have been placed in this situation through no fault of their own.” Clearly, the court places the blame for such consequences upon the EPA, reiterating the “absence of substantial evidence” for the agency’s decision to register the dicamba products.

What now?
The court raised the issue we’re all wondering about now: can growers still use the dicamba products they’ve purchased? Unfortunately, we don’t have an immediate answer to the question, because it depends largely upon how the EPA responds to the ruling. We do know that:

- FIFRA § 136a prohibits a person from distributing or selling any pesticide that is not registered.
- FIFRA § 136d allows the EPA to permit continued sale and use of existing stocks of a pesticide whose registration is suspended or canceled. The EPA utilized this authority in 2015 after the Ninth Circuit Court of Appeals vacated the EPA’s registration of sulfoxaflor after determining that the registration was not supported by substantial evidence. In that case, the EPA allowed continued use of the existing stocks of sulfoxaflor held by end-users provided that the users followed label restrictions. Whether the agency would find similarly in regards to existing stocks of dicamba is somewhat unlikely given the court’s opinion, but remains to be seen. The EPA’s 2015 sulfoxaflor cancellation order is here.
- While the U.S. EPA registers pesticides for use and sale in the U.S., the product must also be registered within a state in order to be sold and used within the state. The Ohio Department of Agriculture oversees pesticide registrations within Ohio, and also regulates the use of registered pesticides.
- If the EPA appeals the Ninth Circuit’s decision to the U.S. Supreme Court, the agency would likely include a request for a “stay” that would delay enforcement of the court’s Order.
- Bayer strongly disagrees with the decision but has paused its sale, distribution and use of XtendiMax while assessing its next step and awaiting EPA direction. The company states that it will “work quickly to minimize any impact on our customers this season.” Bayer also notes that it is already working to obtain a new registration for XtendiMax for the 2021 season and beyond, and hopes to obtain the registration by this fall. See Bayer’s information here.
- BASF and Corteva have also stated that they are awaiting the EPA’s reaction to the decision, and will “use all legal remedies available to challenge this Order.”
- Syngenta has clarified that its Tavium Plus VaporGrip dicamba-based herbicide is not part of the ruling and that the company will continue selling that product.

For now, all eyes are on the U.S. EPA’s reaction to the Ninth Circuit’s decision, and we also need to hear from the Ohio Department of Agriculture. Given the current state of uncertainty, it would be wise for growers to wait and see before taking any actions with dicamba products. We’ll keep you posted on any new legal developments. Read the court’s decision in National Family Farm Coalition et al v. U.S. EPA here.
Weather Potpourri: Hot and Tropical – Turning Cooler This Weekend

By Aaron Wilson

Source: https://agcrops.osu.edu/newsletter/corn-newsletter/2020-17/weather-potpourri-hot-and-tropical—turning-cooler-weekend

After a long period of cold spring temperatures, the last couple of weeks have generally been above average by a degree or two in southeast Ohio to more than four degrees above average in north-central and northeast Ohio. Precipitation has usually been light during this time as well (less than 2 inches) except in a few heavier pockets across southern and eastern Ohio (Figure 1). For more information on recent climate conditions, check out the Hydro-Climate Assessment from the State Climate Office of Ohio.

Figure 1: Multi-sensor observed 7-day precipitation ending on June 8, 2020. Figure from the Midwestern Regional Climate Center

(https://mrcc.illinois.edu).

Tropical Storm Cristobal came ashore in Louisiana Sunday night, and the remnants of this storm are moving northward into the central U.S. This storm will turn northeastward...
toward the Great Lakes on Tuesday. This will lead to a hot Tuesday across the region, with much of Ohio hitting the upper-80s to perhaps mid-90s. Scattered thunderstorms are possible in the west Tuesday afternoon and evening, with a better chance of scattered storms Tuesday night and Wednesday across the state. Weather will turn fair for Thursday through Sunday, maybe a passing shower over the weekend, as temperatures dip below average. Highs are expected to be in the 70s with lows in the upper-40s to low-50s. Overall, we are expecting light precipitation over the next seven days except in isolated locations where heavier storms occur on Wednesday (Figure 2).

The latest NOAA/NWS/Climate Prediction Center outlook for the 6-10 day period (June 14-18) shows a strong likelihood for below-average temperatures and below-average precipitation (Figure 3). Normal highs during the period should be in the upper-70s to low-80s (north to south), normal lows in the upper-50s to low-60s, with about 1.05-1.20 inches of rainfall per week. The 16-Day Rainfall Outlook from NOAA/NWS/Ohio River Forecast Center strongly supports below-average precipitation over the next couple of weeks.
Lower First Cutting Hay Yields Being Reported

By: Mark Sulc
Source: https://agcrops.osu.edu/newsletter/corn-newsletter/2020-17/lower-first-cutting-hay-yields-being-reported

We are hearing reports from forage producers around Ohio that first cutting yields are lower than usual. Forages took a hit from the late freezes and overall cold weather this spring, which arrested or even set back their development. Another factor reducing yields is that many producers cut earlier than usual because of the recent stretch of good hay-making weather.

I observed noticeable differences in first cut yield among forage stands that differed in soil fertility status, cutting management history, and age of the stand. Yields were higher where stands were younger, pH and fertility were at recommended levels, and proper cutting schedules had been followed in prior years. The history of appropriate management and younger stand life improved the ability of the plants to withstand and recover from the weather stress this spring.

The good news is that forage quality is expected to be higher than usual for first cutting here in Ohio. This should improve animal performance on those forages compared with our regular, more mature first cutting forage in Ohio.

If you are concerned about forage supplies this year, Chris Penrose has some excellent suggestions to consider in an article that previously appeared in the OSU Beef Newsletter and is repeated here. Below are additional resources we shared last year that can be applied this year, where forage supplies are expected to be short. More details about the various options for boosting forage supplies with annual forages are discussed.


Short season forages for dairy farms: [https://forages.osu.edu/sites/forages/files/imce/DIBS31-16_Short_Season_Forages_to_Fill_Supply_Gaps_for_Dairy_Farms.pdf](https://forages.osu.edu/sites/forages/files/imce/DIBS31-16_Short_Season_Forages_to_Fill_Supply_Gaps_for_Dairy_Farms.pdf)

**Hay yields off? Don’t panic, there’s time to take action!**

By Chris Penrose, Extension Educator, Ag and Natural Resources, Morgan County

Source: [https://u.osu.edu/beef/2020/06/03/hay-yields-off-dont-panic-theres-time/](https://u.osu.edu/beef/2020/06/03/hay-yields-off-dont-panic-theres-time/)

Some suggest hay yields are half of normal. Is that the result of late freezes, or more timely harvest this year?

I hope you are not having the hay season I am having. While the quality of my hay is good, my yields are extremely disappointing. With over half of my fields made, I am around 50% of a normal crop. The two late freezes killed back growing grass last month, and honestly, I am mowing hay earlier than most years. I am also doing it much faster with my youngest son not working this summer at the Wilmington College farm due to the virus and helping on the farm. Another thing I have noticed over the past few years is that some hay fields have less fescue and orchard grass, and more poor quality forages like cheat grass reducing quality and yields.

If it looks like hay is going to be short this year, here are a few thoughts for the short term and for the long term. First, is there hay you can make from some property not too far from where you live? Sometimes owners may let fields be made at a reasonable price if they are faced with having to pay someone to mow it for them just to maintain open space.

Will your fields benefit from fertilizer and lime? Applications made soon can provide a response this season providing more hay.
Do you have some unproductive cattle that can be marketed?

Have you ever considered planting some warm season annuals like millet, sorghum or sudangrass? They can provide a lot of tonnage until frost. In the next month or two, you can plan for ways to extend the grazing season by stockpiling cool season grass. We know that adding nitrogen (I recommend 50# N/Acre) will increase yields.

Brassicas such as turnips planted in July can provide 10,000 pounds of dry matter in 90 days. Cereal rye and oats or a combination of small grains and brassicas are options as well.

If you have access to corn stalks this fall, that is a great option. If you have corn fields, I have seen success flying on small grains and/or brassicas in the late summer providing a great mixture of corn stalks and annuals to graze in the fall.

Finally, shelled corn can be fed this winter to stretch hay supplies if needed. In the long term, consider improving fertility, then re-seeding fields with improved varieties of grasses and legumes if you have unimproved hay fields. It pays to use top quality seed, especially when you factor in the total cost to re-seed then how many years you should have the crop. You should have better yield and quality. You can seed in late summer (I recommend August) or in the spring. Late summer seedings typically have fewer weed problems, but if you have a lot of deer in you area, their grazing pressure can put severe stress on the crop during the late fall and winter.

The good news is that the remaining hayfields on my farm are in much better shape and with some fertilizer in the next week or two, we should have a good second cutting and eventually grow enough feed for the cattle we keep this winter. We are still in early June and if we figure out our best options now and take action, we will have less of a chance of a shortage of feed this winter.

Andrew’s Monthly News Article

Hello, Ashtabula County! I hope everyone is staying healthy and doing their part to slow the spread of Covid-19. The Extension office in Jefferson is currently closed, but we are still available to assist you! All Extension staff is currently working our normal business hours remotely and you can call the regular office number at 440-576-9008 to reach me or anyone else from my office.

Almost every aspect of life has been impacted by the pandemic and agriculture is no exception. Today I want to share information about available funding to help offset some of the losses suffered due to supply chain issues and drop in demand caused by Covid-
The funding will be provided by the USDA’s Coronavirus Food Assistance Program or CFAP. Applications are currently be accepted through August 28th, 2020 at your local Farm Service Agency Office (You must call ahead and schedule). The program covers a wide variety of crops, both specialty and non-specialty, livestock, and milk production. Continue reading to find out more about the program and to see if you are eligible.

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The CFAP will include $9.5 billion dollars from the Coronavirus Aid, Relief, and Economic Security (CARES) Act and $6.5 billion from the Commodity Credit Corporation. The funds will be used to assist agricultural producers in two ways: 1. Direct payments to producers 2. The USDA purchase and distribution program where food products are bought from American farmers and given to food banks/pantries. In this article I will be sharing information about the direct payments to farmers.

Eligibility:

Those who are eligible must have shared in risk of producing the crop or be entitled to share in the revenue from marketing on January 15, 2020 or April 16, 2020 through May 14, 2020 and must be a U.S. citizen or resident alien. Non-specialty crops, specialty crops, livestock, wool, and dairy milk are all eligible commodity groups. First we’ll talk about Non-specialty crops. **Non-specialty** includes malting barley, canola, corn, upland cotton, millet, oats, soybeans, sorghum, sunflowers, durum wheat, and hard red spring wheat. For corn, the payment rate is 67 cents per bushel and for soybeans it’s 95 cents. **Specialty crops** include many different commodities including apples, blueberries, cantaloupe, peaches, pears, raspberries, strawberries, tomatoes, watermelons, artichokes, asparagus, broccoli, cabbage, carrots, cauliflower, sweet corn, cucumbers, eggplant, garlic, dry onions, green onions, peppers, rhubarb, spinach, squash, sweet potatoes, beans, and mushrooms. There are many more that are listed as eligible but are not usually grown in this part of the country. There are also some crops that could be added late so if your crop isn’t listed above you can still contact FSA to see if is included. **Livestock** that are eligible include cattle, sheep (yearlings and lambs only), and hogs. There’s a good chance that if you are a livestock producer you haven’t participated in many/any FSA programs, don’t let that deter you from signing up.

Signing up:

Applications are currently be accepted at Farm Service Agency offices until offices close on August 28, 2020. The Ashtabula, Geauga, and Lake county FSA Office is located in Orwell and can be reached at 440-437-6330. Remember to call ahead and set up an appointment because due to Covid-19, walk ins will not be accepted. There are a couple forms required to sign up for the program once you decide to apply. These forms include:

- A farm operating plan.
• CCC-901: name, address, Tax ID, citizen status.
• CCC-941: reports average gross income.
• CCC-942: certifies income source, if applicable.
• AD-1026: highly erodible land and wetland certification.
• AD-2047: provides basic customer contact information.
• SF-3881: collects bank information for direct deposit.

If you have participated in FSA programs in the past, like the recent farm bill programs, you most likely already have these forms completed. If you are new to FSA programs they will assist you in getting the correct forms filled out. If your application is approved, you will receive 80% of the total payment and will receive the remaining portion at a later date if funds are still available.

If you would like more information regarding the CFAP, then I encourage you to go to farmoffice.osu.edu or to the USDA web page www.farmers.gov and as always you can ask me about it by calling my office at 440-576-9008.

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Now more than ever Camp needs your support
By: Jenna Hoyt., 4-H Educator, Ashtabula County Extension Office

For more than 60 years, Camp Whitewood has been a “home away from home” and the highlight of summer for many campers. Since our first summer in 1940, youth have visited camp to make memories and enjoy swimming, boating, fishing, crafts and so much more on 200 acres of beautifully preserved land.

Each season at Camp Whitewood:

Northeast Ohio Agriculture

OHIO STATE UNIVERSITY EXTENSION
Ashtabula, Portage and Trumbull Counties
• Over 1,000 summer campers sleep in our cabins
• 1,500 school and community guests visit
• Over 25,000 meals are served in our dining hall
• Many religious groups, community/corporate events, emergency rescue trainings and weddings happen at Camp Whitewood

As a result of COVID-19 and the restrictions that have been put in place, Ohio 4-H has made the very difficult decision to suspend 4-H camps this summer. While we are saddened by this news, we fully support the decision to keep our youth safe because the health of our campers, staff and volunteers are our highest priority. However, with this decision comes the difficult situation of keeping the camp running while our yearly income has been reduced by 80%.

Those interested in donating to the University’s Campaign may visit https://buckeyefunder.osu.edu/4hcampwhitewood, contact Jenna Hoyt at hoyt.88@osu.edu or Camp Whitewood’s Executive Director Andy Hudak at 440-272-5275.

Lee’s Monthly News Column

Hello Trumbull County! Hopefully you have been able to make the most of our dry weather to put in your garden, plant your fields, and spend some time with family and friends outside.

As we move into the summer and approach our first cutting of hay, I have been receiving a few questions about splitting hay on “shares”. Splitting hay on shares is an agreement between the person who owns the hayfield, and the person that owns and operates the hay equipment to split the amount of hay produced as a form of payment. Common arrangements are splitting the hay (operator/landowner) 50/50, 60/40, and 75/25. The amount, or share, that is split depends on several factors: who pays the fertilizer bill, quality of hay, quantity of hay, etc. Generally speaking, whoever provides more to the production of the hay crop will receive a greater portion of the share.

Going in on shares for a hay crop does present some challenges though that you should be aware of. The biggest concern is getting an accurate count of the hay so that an accurate split can be made. I can hear you thinking “counting bales isn’t that hard”, but have you ever pulled your hair out trying to count a poorly stacked wagon of hay when the bale counter broke? Think about how you will separate the shares of hay before the first windrow is baled up to prevent any hard feelings or conflict. It’s much easier to count round bales, large square bales, or simply by the ton if you have easy access to a scale.
The other, and bigger concern, is that most of these agreements are verbal agreements without a written contract. In the absence of a written agreement a business partnership between the landowner and operator could inadvertently be made. Under normal circumstances this may not be an issue, but if there were an accident in the course of making hay, both parties could be held liable. For example, if the operator pulls out of the hay field with a load of hay, and strikes a car in the process, the landowner may be at financial and legal risk for the accident. The financial and legal risk would also extend to the operator if the landowner causes an accident.

There are a couple of ways to prevent the legal issues. One is to have a written and signed contract stating that the shares arrangement does not reflect an intention to enter into a business partnership. Once you have a draft document written up, it would be recommended to have it reviewed by a lawyer to make sure that both parties are protected. It is also recommended that both the landowner and operator have adequate liability policies. If you are farming, you should have one anyway to protect yourself even if you are not farming on shares. There are other ways to split hay without the common shares agreement that may offer more protection too. Renting by the acre, custom harvesting, paying market prices, etc. are all safer options. Whatever method you choose be sure to have a written agreement.

Putting up hay is a dangerous operation, so please be safe this weekend! PTO shaft guards, slow moving vehicle signs, shielding on equipment, and proper training are all essential to make sure that everyone sees another hay season with all limbs and digits attached. Accidents can happen in a split second with lifetime consequences. Always think ahead and prepare for the worst and hope for the best. Stay safe out there!

If you have any questions on farm leases, rental rates, crop shares, or farm safety you can reach me at 330-638-6783. OSU Extension Trumbull County is still working from home, but we are working on returning to the office soon. If you need a soil test kit, have plant samples, or other items that you need help with give us a call.

Take care, and stay healthy!