

Bayer, BASF, Corteva urge federal court to review dicamba weedkiller ban, calling it 'unconstitutional'

Bayer, BASF and Corteva Agriscience continue the fight to preserve postemergent dicamba use. The companies are contesting the results of a June 3 decision by three judges on the U.S. Circuit Court of Appeals for the Ninth Circuit, which vacated the registrations of their dicamba herbicides, XtendiMax, Engenia and FeXapan.

In the original decision, the three judges assigned to the case concluded that EPA had broken its own governing law when it re-registered the three herbicides in 2018 Now Bayer, BASF and Corteva are asking that a broader group of Ninth Circuit judges re-hear the case.

The companies argue that the judges' decision to vacate the registrations effective immediately was a departure from past precedent among other Circuit Courts, as well as the Supreme Court, and violated principles of administrative and constitutional law.

BASF and Corteva also reiterated an argument that the judges' decision did not give them an opportunity to defend their herbicides, since the original lawsuit in 2017 only mentioned Bayer's XtendiMax. Only when the case was re-filed in 2019 was it expanded to address EPA's entire 2018 dicamba registration decision, which included Engenia and FeXapan.

BASF and Corteva argue that this new scope was not clear enough in the course of the lawsuit, and the companies weren't aware their herbicides' registrations were at stake before the June 3 ruling.

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