

Arkansas State Plant Board/2021 Dicamba Rule: Challenge Filed in Pulaski County Circuit Court



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A Complaint for Declaratory Judgment and Permanent Injunctive Relief (“Complaint”) was filed on May 11th in the Circuit Court of Pulaski County, Arkansas, against the Arkansas State Plant Board (“Plant Board”) challenging a rule that had been promulgated addressing the use of pesticides containing dicamba.

The plaintiffs filing the Complaint include:

- OMP Farms, LLC
- Ozark Mountain Poultry, Inc.
- Freedom to Farm Foundation, Inc.
- Jason McGee
- Tim Gannon
- Leslie Brown
- Hollis Mankin

Dicamba is a broadleaf weed herbicide. It is applied prior to planting crops. Though first registered in the late 1960s, dicamba returned to prominence in 2016.

The United States Environmental Protection Agency (“EPA”) had first registered the product for over-the-top use (i.e., during the growing season) on approved, dicamba-tolerant cotton and soybeans. The agency’s registration and the increase of in-use coincided with increased weed resistance to the herbicide glyphosate.

The use of dicamba has not been without controversy because of the concern regarding drift and non-target crops, including non-tolerant soybeans, cotton, vegetables, orchards and trees. As a result, the Plant Board’s decisions regarding the use of dicamba in the state has fueled advocacy efforts by both proponents and opponents.

The Plant Board regulates dicamba because it is a pesticide as defined in Ark. Code Ann. § 20-20-203.

The Complaint states that the Plant Board adopted a rule addressing dicamba May 3, 2021. It states that “the most significant provisions” include:

- Extends the dicamba Cutoff Date from May 25 to June 30;
- Reduces buffers for certified organic crops and commercial specialty crops from 1 mile to ½ mile;
- Reduces buffers for other susceptible crops from ½ mile to ¼ mile; and

- The Rule was adopted as both an emergency rule and a permanent rule. See Exhibit 2 (the “Final 2021 Dicamba Rule”).

The Complaint asks that the Court prevent the Plant Board from implementing the Dicamba Rule. The basis for the request are arguments that the Dicamba Rule:

- Is arbitrary and capricious
- Exceeds the Plant Board’s authority
- Is not based on substantial evidence
- Violates the Administrative Procedures Act and the Arkansas Pesticide Use and Application Act
- Injures or threatens to injure the plaintiffs and their property and business

A copy of the Complaint can be downloaded [here](#).