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Court Rejects EPA Review on Sulfoxaflor

EPA Wanted to Allow Insecticide's Use While Conducting ESA Review

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A federal court rejected EPA's request to conduct an Endangered Species Act review of the insecticide sulfoxaflor. (DTN/Progressive Farmer file photo by Pamela Smith)

OMAHA (DTN) -- EPA's request to conduct an Endangered Species Act review of the insecticide sulfoxaflor was rejected by the U.S. Court of Appeals for the Ninth Circuit in San Francisco, in a ruling handed down on Tuesday.

The agency was sued in 2019 by the Center for Food Safety and the Center for Biological Diversity for failing to conduct a review.

Sulfoxaflor is used to control piercing and sucking insects such as the sugarcane aphid in sorghum and the tarnished plant bug in cotton. The agency was ordered by a federal court in 2015 to vacate the sulfoxaflor registration because of a lack of data on its effects on bees.

In October 2020, EPA asked the court to allow it to correct acknowledged mistakes in the registration. The plaintiffs in the case objected to the agency's motion.

Part of the EPA motion would have allowed sulfoxaflor to remain in use while the agency conducted the review. The groups opposed the motion because they said in a court document they didn't trust EPA to conduct the review.

In a July 12, 2019, announcement, EPA said it had enough data to show sulfoxaflor is safe for humans and bees and had granted unconditional registration for new uses of sulfoxaflor on the Transform WG and Closer SC labels. The new uses are alfalfa, corn, cacao, grains (millet, oats), pineapple, sorghum, teff, teosinte and tree plantations. The agency also added back cotton, soybeans, citrus, cucurbits and strawberry.

The restrictions on the registrations granted in October 2016 also were removed.

In May 2016, the agency proposed a new label that excluded crops like cotton and sorghum and imposed spraying restrictions designed to minimize pollinators' exposure to the insecticide.

The Ninth Circuit vacated sulfoxaflor's registration in November 2015 because of pollinator concerns. The court cited a lack of data on possible harm to bees as the reason for ordering EPA to pull the registration.

EPA then asked Dow AgroSciences (now Corteva Agriscience) for more data on sulfoxaflor.

Bridgette Readell, market development specialist for Corteva Agriscience, said in a statement following the EPA announcement the approval was much needed.

EPA Assistant Administrator for Office of Chemical Safety and Pollution Prevention Alexandra Dapolito Dunn said during the announcement the agency relied on raw data from industry studies in reaching the decision.

Sulfoxaflor is safer than other insecticides because it requires fewer applications, Dunn said.

For years, states have petitioned EPA for emergency exemptions to be allowed to use sulfoxaflor.

In 2019 alone, Dunn said the agency has approved 12 state emergency requests for use in cotton and 14 in sorghum.

In making the decision, Dunn said the agency discovered many growers could see crop losses of 50% or higher without having sulfoxaflor available. Growers will still need to follow state regulations on the insecticide, she said.

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