

# PESTICIDE REPORTS

Division of Agricultural Sciences and Natural Resources • Oklahoma State University  
<http://pested.okstate.edu>



**December, 2022**

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## OKLAHOMA PESTICIDE LAW & RULES CHANGES

ODAFF has published on their website an updated copy of the Oklahoma Combined Pesticide Law & Rules. These changes are now in effect.

Some of the changes are license renewals for Commercial/ Non-commercial companies and additions to recordkeeping.

Commercial/Non-commercial license holders whose name begins a number, or the letter A-L must now renew before September 30. License holder whose name that begin with the letter M-Z will not change and must renew before December 31.

Recordkeeping requirements added were:

- Name and certification number of the certified applicator who made or supervised the application and name of the non-certified applicator under direct supervision, if any.
- Size of the area treated.

For an updated copy of the Oklahoma Combined Pesticide Law & Rules you can find a at [pested.okstate.edu](http://pested.okstate.edu) or go to <https://ag.ok.gov/wp-content/uploads/2020/11/2022-Combined-Pesticide-Manual.pdf> (OSU PSEP)

# EPA ADVANCES EARLY PESTICIDES PROTECTIONS FOR ENDANGERED SPECIES, INCREASES REGULATORY CERTAINTY FOR AGRICULTURE

Today, the U.S. Environmental Protection Agency (EPA) released an [Endangered Species Act \(ESA\) Workplan Update](#) that outlines major steps to increase protections for wildlife and regulatory certainty for pesticide users. The Workplan Update details how EPA will pursue protections for nontarget species, including federally listed endangered and threatened (i.e., listed) species, earlier in the process for pesticide registration review and other Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) actions. These early protections will help EPA comply with the ESA, thus reducing the Agency's legal vulnerability, providing farmers with more predictable access to pesticides, and simplifying the ESA-FIFRA process that, left unchanged, creates both significant litigation risk and a workload far exceeding what EPA has the resources to handle.

This update is a follow-up to [EPA's April 2022 ESA Workplan](#) that addresses the complexity of meeting its ESA obligations for thousands of FIFRA actions annually. Among other things, the ESA Workplan prioritizes certain FIFRA actions for ESA compliance, outlines how EPA will pursue early mitigation for listed species under FIFRA, and describes directions for expediting and simplifying the current pesticide consultation process.

When EPA registers a pesticide or reevaluates it in registration review, it has a responsibility under FIFRA to determine whether the pesticide presents unreasonable adverse effects to human health or the environment. EPA conducts human health and ecological risk assessments to determine what risks are posed by a pesticide and whether changes to the use(s) or proposed use(s) are necessary to protect human health or the environment. In 2007, an amendment to FIFRA formalized a requirement that EPA review each registered pesticide every 15 years. This amendment set

the registration review deadline for pesticides registered before Oct. 1, 2007, as Oct. 1, 2022. EPA shared an [update on its registration review work](#) in Sept. 2022.

EPA also has a responsibility under the ESA to ensure certain pesticide registrations do not jeopardize the continued existence of listed species or adversely modify their designated critical habitats. In the past few decades, EPA has seen an increase in litigation due to the Agency's failures to meet its ESA obligations when taking FIFRA actions. Over the next six years, existing court-enforceable deadlines will require EPA to complete ESA reviews for 18 pesticides—the most the Agency estimates it can handle during this period based on its current capacity and processes. Ongoing litigation and settlement discussions for other lawsuits cover dozens of additional pesticides and will likely fill the Agency's ESA workload well beyond 2030. If EPA's ESA efforts continue at this pace, a future court may decide to drastically curtail pesticide use until EPA meets its obligations. This unsustainable and legally tenuous situation not only provides inadequate protection for listed species but also creates regulatory uncertainty for farmers and other pesticide users.

## ESA Workplan Update

Today's document is EPA's first update to the ESA Workplan and covers four main goals:

1. Describes EPA's overall approach to mitigating ecological risks in registration review, which includes prioritization of registration review cases based on opportunities to reduce a pesticide's risk to human health or the environment.
2. Proposes a menu of FIFRA Interim Ecological Mitigation measures that EPA will draw from for many future conventional and biological pesticide registration and registration review actions to protect nontarget species. For each FIFRA action, EPA will consider this menu and propose, based on the risks and benefits of the particular pesticide, which specific measures to include on the pesticide label.
3. Proposes label language to expand the use of online endangered species protection bulletins to implement geographically specific mitigation measures for individual listed species. These measures are designed to focus protections only

in specific needed areas, thus minimizing impacts to agriculture. Where needed, EPA may develop these measures to complement the generic FIFRA ecological mitigation described above.

4. Describes current and future programmatic initiatives with other federal agencies to prioritize mitigation for listed species that are particularly vulnerable to pesticides and to improve the efficiency and timeliness of the ESA-FIFRA process.

On Nov. 17, EPA is hosting a webinar to discuss these efforts and answer questions ([register here](#)). EPA will continue to share progress on existing and future ESA initiatives with stakeholders through updates to its website and other public forums.

### **FIFRA Interim Ecological Mitigation measures to protect nontarget species**

The first strategy described in EPA's ESA Workplan is to "meet ESA obligations for FIFRA actions." As part of its work to execute this strategy, EPA has identified a menu of Interim Ecological Mitigation measures it will use as a starting point to address pesticide risks to nontarget species during registration and registration review.

The menu of Interim Ecological Mitigation will include measures to reduce pesticide spray drift and pesticide runoff and will be considered as part of EPA's upcoming proposed interim registration review decisions. While EPA intends for this set of Interim Ecological Mitigation measures to apply widely to many pesticides, EPA will consider the menu of options for any given pesticide depending on the level of risk that it poses to species and the exposure route.

In contrast to identifying mitigation measures pesticide-by-pesticide or species-by-species as EPA has typically done in the past, EPA anticipates that this approach will more efficiently establish protections for nontarget species, including listed species, and standardize the protections across similar pesticides.

### **Endangered species protection bulletins and other label language**

To better protect listed and other nontarget species, EPA will also work with registrants to add language on pesticide incident reporting, advisory language to protect insect pollinators, and language to most outdoor-use pesticide labels that directs users to reference [Bulletins Live! Two](#).

Bulletins Live! Two is a website where pesticide users can find endangered species protection bulletins. These bulletins describe geographically specific use limitations to protect threatened and endangered species and their designated critical habitat.

EPA expects that once consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service is completed for any given outdoor-use pesticide, endangered species protection bulletins may be necessary for at least one listed species.

EPA also expects that working with registrants to proactively add the reference to Bulletins Live! Two to pesticide labels in advance of consultation will ultimately save the Agency, state partners, and registrants time and resources by minimizing the number of amendments to labels.

### **Improving the pesticide consultation process and new approaches to identifying mitigation for multiple species and pesticides**

The ESA Workplan Update also describes initiatives that will help EPA and other federal agencies improve approaches to mitigation under the ESA and improve the interagency consultation process outlined in the ESA Workplan. These initiatives include EPA's work to [identify ESA mitigation measures for pilot species](#), incorporate early ESA mitigation measures for groups of pesticides (e.g., herbicides), and develop region-specific ESA mitigations.

EPA is accepting public comment on the proposed set of interim mitigation measures and the proposed revisions to label language included in the Workplan Update appendix for 75 days in docket [EPA-HQ-OPP-2022-0908](#) at [regulations.gov](https://www.regulations.gov). [Read the ESA Workplan Update](#).

(EPA, November 16, 2022)

<https://www.epa.gov/pesticides/epa-advances-early-pesticides-protections-endangered-species-increases-regulatory>

## EPA APPROVES STRONGER PLANS FOR CERTIFICATION OF PESTICIDE APPLICATORS

The U.S. Environmental Protection Agency (EPA) has approved 13 state and federal agency certification plans that comply with the improved federal standards to enhance worker safety under the 2017 Certification of Pesticide Applicators (CPA) rule.

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires authorities to have an EPA-approved plan to certify applicators of restricted use pesticides (RUPs). To date, of the nation's 68 certification programs, EPA has reviewed all proposed modified plans and has approved eight plans from states and territories and five from federal agencies, of which all are now starting to be implemented.

In 2017, EPA updated the [CPA](#) regulations, setting stronger standards for people who apply RUPs. Improvements include enhancing applicator competency standards to ensure RUPs are used safely, establishing a nationwide minimum age for certified applicators and persons working under their direct supervision, and protection for noncertified applicators by requiring training before they can use RUPs (under the direct supervision of a certified applicator), among others.

The implementation of revised certification programs is crucial to reducing potential RUP exposures to certified applicators and those working under their direct supervision, other workers, the public, and the environment.

The following approved state and territory certification plans meet or exceed the standards mandated in the 2017 CPA rule:

- Alaska (Alaska Department of Environmental Conservation)
- California (California Department of Pesticide Regulation)
- Nebraska (Nebraska Department of Agriculture)
- New York (New York State Department of Environmental Conservation)
- Oregon (Oregon Department of Agriculture)
- Puerto Rico (Puerto Rico Department of Agriculture)
- Vermont (Vermont Agency of Agriculture, Food and Markets)
- U.S. Virgin Islands (U.S. Virgin Islands Department of Planning and Natural Resources)

In addition, the following federal agency certification plans meet or exceed the standards mandated in the 2017 CPA rule:

- U.S. Department of Agriculture, Animal and Plant Health Inspection Services, Plant Protection and Quarantine
- U.S. Department of Agriculture, Forest Service
- U.S. Department of Defense
- U.S. Department of Energy; Bonneville Power Administration
- U.S. Department of the Interior, Bureau of Land Management

State, territory and tribal authorities with existing plans can continue using those plans until November 4, 2023, consistent with EPA's recently issued extension ([87 FR 50953, August 19, 2022](#)). EPA is working closely with authorities to address challenges in revising their plans and will continue to approve plans on a rolling basis. After November 4, 2023, only authorities with EPA-approved modified certification plans can continue to certify applicators of RUPs.

EPA makes these certification plans available to the public by:

- Tracking the progress of certification plan reviews and approvals [here](#).
- Approving certification plans as they are ready and announcing the approvals in batched Federal Register Notices (approximately quarterly).

- Making all pre-2017 and newly approved certification plans publicly available in EPA's Certification Plan and Reporting Database (CPARD) [here](#).

Upon publication, the Federal Register Notice will be available in docket EPA-HQ-OPP-2022-0509 at [www.regulations.gov](http://www.regulations.gov).

(EPA, November 22, 2022)  
<https://www.epa.gov/pesticides/epa-approves-stronger-plans-certification-pesticide-applicators>

## **SYNGENTA, CORTEVA SUED ON GENERIC SALES**

Two farmers are seeking damages in separate class-action lawsuits filed against Syngenta Crop Protection and Corteva Inc., alleging the companies pay distributors to block competitors from selling less-expensive generic pesticides and other products to farmers.

The Federal Trade Commission and attorneys general from 10 states sued the companies at the end of September, alleging they run so-called "loyalty programs" in which distributors only get paid if they limit business with competing manufacturers.

Following the FTC lawsuit in the U.S. District Court for the District of Middle North Carolina, Jackson County-Illinois-farmer Charles Anderson and Chautauqua County-New York-farmer Frederick C. Croscut filed identical class-action lawsuits in the same court.

Both farmers are seeking a jury trial on alleged anti-trust violations including conspiracy to restrain trade, monopolization, violation of state anti-trust laws, state consumer-protection laws and unjust enrichment.

Syngenta and Corteva are two of the largest pesticide manufacturers operating in the United States. Syngenta, based in Switzerland, is a subsidiary of a Chinese state-owned company. Corteva, headquartered in Indianapolis, is the company formed as part of a merger between DuPont and Dow Chemical Company.

"Defendants also maintain their so-called 'rebates' (in reality, exclusion payments meant to impede generic sales) at levels that ensure distributors will profit more from selling defendant's branded products than they would from selling generic products, even at high volumes," the lawsuits said.

"Additionally, defendants strictly enforce the terms of the loyalty programs and penalize distributors who do not meet loyalty thresholds. In some instances, the consequences of missing a loyalty threshold can be so severe that distributors have declined to purchase or promote generic products at all, have endeavored to exceed loyalty thresholds, and have deferred purchases of generic products until the end of the season, in order to minimize the risk of inadvertently missing a loyalty threshold."

The lawsuits said loyalty-program "complexity" and a "lack of transparency" to farmers and generic manufacturers "harmed by the conduct and deferred payment timing" cause distributors to retain loyalty program payments as profit and "make them less likely to pass on loyalty program payments to farmers in the form of lower prices."

In an Oct. 21, 2022, letter sent to Syngenta distributors and retailers, Syngenta Crop Protection, LLC, President Vern Hawkins said the company would continue to offer the loyalty program while the legal cases play out.

In the letter, Hawkins said the lawsuit by FTC and the 10 states including California, Colorado, Illinois, Iowa, Indiana, Minnesota, Nebraska, Oregon, Texas and Wisconsin, makes "false and misleading allegations" regarding Syngenta's discount program and that the company intends to defend the program.

"Please rest assured that our program will remain available for all customers who choose to participate while we defend this matter," Hawkins wrote.

Although the FTC lawsuit alleges the discount program "coerces" distributors and retailers to not buy generic products, Hawkins said it was not true and that distributors and retailers "always have the free choice not to participate in Syngenta discount programs and to

purchase whatever generic companies' products or other innovator companies' products they want."

Hawkins said despite FTC claims, the U.S. crop protection industry is "very competitive and distributors, retailers and farmers have many crop protection product choices."

He went on to say, "We are disappointed that the FTC has chosen to disregard the pro-competitive effects these discount programs provide to you, including greater choice and lower prices."

Corteva offered the following statement to DTN in response to the FTC complaint in September: "Corteva Agriscience believes there is no basis for the complaint filed by the Federal Trade Commission on Sept. 29, 2022, and that the FTC's case faces significant hurdles on both the facts and the law. We will vigorously defend our position that Corteva's customer marketing programs are fully compliant with the antitrust laws and are, in fact, pro-competitive programs that benefit both channel partners and farmers.

"Corteva's marketing programs, contrary to the FTC's assertion that they block generics from entering the market, facilitate the company's pro-competitive mission of providing innovative products, services, support and stewardship to customers through Corteva's network of distributors and retailers. As always, our aim is to provide significant value and choices to customers, allowing them to be more sustainable, productive and profitable in their operations. Corteva also equips them to provide consumers with a wider range of healthy and nutritious food options, as well as to produce fuel, feed and fiber to support the needs of society.

"As a U.S.-based innovator of crop protection products, this case threatens the pro-competitive investments that Corteva makes and that growers rely on to protect America's crops. We are confident that we will prevail in this litigation and that there is no basis for the FTC's complaint."

Read more on DTN:

"Syngenta, Corteva Sued by FTC, States," [https://www.dtnpf.com/...](https://www.dtnpf.com/)

(Progressive Farmer, November 10, 2022)

<https://www.dtnpf.com/agriculture/web/ag/crops/article/2022/11/10/farmers-file-class-action-lawsuits>

## **AMAZON TO PAY CALIFORNIA NEARLY \$5 MILLION FOR ILLEGAL PESTICIDE SALES**

[The California Department of Pesticide Regulation \(DPR\) announced](#) it has reached a multimillion-dollar legal agreement with online retail giant Amazon.com Services (Amazon) for the illegal sale of pesticides in California.

Under the terms of the agreement, Amazon will pay DPR a total of \$4.97 million – \$3.69 million in unpaid pesticide sales assessment fees and related late penalties, and \$1.28 million in civil penalties associated with retail sales of unregistered pesticides into California. Amazon also agreed to register as a pesticide broker, and report and pay the mill assessment associated with all future retail sales of registered pesticides into California.

"It is critical that those selling pesticides in California, especially companies with Amazon's resources, reach and influence, comply with pesticide laws that protect the health of all Californians and our environment," said DPR Director Julie Henderson. "DPR's action should send a message to all pesticide sellers, including online sellers, that California will take action to protect the health and safety of its people and environment."

DPR's review of the company uncovered multiple violations. Among them, Amazon sold unregistered pesticides in California, failed to report and pay required mill assessment fees associated with the sale of registered pesticides in California, and failed to hold a valid pesticide broker's license.

Under California law, pesticides must be registered by the state before they are sold. DPR evaluates a product's potential human health and environmental risks and efficacy prior to registration, and as needed, sets state-specific rules limiting use. Sales of unregistered

pesticides are illegal and can present human health and environmental risks.

The mill assessment is charged at the first point of sale of a pesticide in California. Mill revenues help fund DPR programs including worker safety training, environmental monitoring and enforcement. The assessment also allows DPR to track pesticides sold into the state. These programs are integral to DPR's mission to protect human health and the environment for all Californians.

(PCT Online November 4, 2022)

<https://www.pctonline.com/article/amazon-pay-california-illegal-pesticide-sales/>

## **N.C. STATE STUDY: COMMON VETERINARY DRUGS SHOW EFFECTIVENESS AGAINST BED BUGS**

Two common drugs used by veterinarians to combat parasites may be effective against bed bugs, with one showing especially strong potential, according to a [new study](#) from North Carolina State University that examined the drugs in the context of controlling resurgent bed bug populations on poultry farms.

Fluralaner and ivermectin, which are used to kill fleas and ticks on household pets like dogs and cats, among other uses, were tested for their effectiveness in killing bed bugs. In a collaboration between entomologists and veterinary scientists from NC State's College of Veterinary Medicine, researchers tested bed bug mortality rates in different experiments: after the pests consumed blood mixed with the drugs on the lab bench and after bed bugs bit and fed off chickens that had either ingested or received topical treatment with the drugs.

Fluralaner is a relatively new, longer-lasting anti-parasitic drug used mostly for companion animals; however, Europe and Australia have approved its use for

the poultry industry. Besides household pet uses, ivermectin effectively serves anti-parasitic uses in human populations, particularly in Africa, as well as in larger animals.

Both drugs showed powerful efficacy on the lab bench, killing most bed bugs, although fluralaner performed much more effectively on bed bugs that showed resistance to common insecticides.

"The drugs affect receptors in the insect's nervous system," said Coby Schal, Blanton J. Whitmire Distinguished Professor of Entomology at NC State and the corresponding author of a paper describing the work.

Fluralaner was highly effective at killing bed bugs that fed on chickens dosed with the drug. Ivermectin, meanwhile, was ineffective against bed bugs that fed on dosed chickens.

"We used the recommended dosage of ivermectin, either in a topical form or ingested, but neither was able to kill bed bugs," said Maria González-Morales, a former Ph.D. student at NC State and the first author of the paper.

The researchers say that chickens could be quickly metabolizing or clearing ivermectin from their systems.

"The bed bug is a globally important insect," Schal said. "The last few decades have seen a resurgence of bed bugs in homes, and now we're seeing bed bugs return to poultry farms. Since there is no proven method to stop bed bugs in commercial farms, the potential problems on poultry farms could be massive. We're trying to get ahead of it by developing technologies that can eliminate bed bugs."

"The health effects to poultry from bed bug infestation are not well documented, but anecdotally poultry farmers see animal welfare concerns like stress and anemia, which could negatively affect meat or egg production," González-Morales said.

"There are also concerns for workers on these farms considering how easily bed bugs can spread from poultry to people," Schal added.

The researchers say that dosing fluralaner in poultry drinking water could serve as an effective measure against bed bugs. A combination of monitoring, education, heat treatments and fluralaner could hold the key to eradicating bed bugs from infested poultry farms, they add.

The study appears in *Parasites & Vectors*. Andrea E. Thomson, Olivia A. Petritz, Rocio Crespo, Ahmed Haija, Richard G. Santangelo co-authored the paper. Funding was provided by the Blanton J. Whitmire Endowment at NC State, and grants from the U.S. Department of Housing and Urban Development Healthy Homes program (NCHHU0053-19) and the National Science Foundation (DEB-1754190).

(PCT Online November 30, 2022)

<https://www.pctonline.com/article/common-veterinary-drugs-effectiveness-against-bed-bugs/>

## **STAKEHOLDER GROUPS CALL ON CONGRESS TO REAFFIRM FEDERAL PESTICIDE PREEMPTION**

More than 300 stakeholder groups called on Congress to reaffirm federal pesticide preemption on labeling and packaging. The groups warn failing to do so could result in dangerous consequences for food security, the environment, public health, vital infrastructure, and other uses where pesticides provide important societal benefits.

The Federal Insecticide, Fungicide, and Rodenticide Act says that states “shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required” by the federal government. Recently, some states have sought to impose label requirements that contradict federal findings. The stakeholder groups claim this could erode public trust and lead to conflicting labels, disrupting commerce and access to vital tools.

“State labels that conflict with EPA’s scientific guidance threaten public confidence in EPA’s authority and science-based regulation and contributes to the misunderstanding of the critical role pesticides play in sustainably feeding a growing world,” said Tom Haag, president of the National Corn Growers Association, in a news release.

Three hundred and thirty-two agricultural, environmental, academic, infrastructure, and other stakeholder groups signed a letter to congressional leadership, asking them to reaffirm that states may not impose additional labeling or packaging requirements that conflict with federal findings.

“Farmers and other pesticide users need predictable access to these tools to protect their crops and maintain important conservation practices,” said Brad Doyle, president of the American Soybean Association, in a news release. “Contradictory state labels that would create an unworkable patchwork risk disrupting access to pesticides, which would harm our food supply and the ability to protect our environment.” (Successful Farming, November 14, 2022)

<https://www.agriculture.com/news/crops/stakeholder-groups-call-on-congress-to-reaffirm-federal-pesticide-preemption>

## **COURT GRANTS MOTION TO CHANGE VENUE IN DICAMBA LAWSUIT**

A Beaumont Court of Appeals decision in *Timmons v. Monsanto* will result in a lawsuit filed by Texas grape growers against Bayer, BASF, and Monsanto for alleged damage from dicamba drift being moved from Jefferson County to counties where the plaintiffs’ vineyards are located.

### **Factual Background**

In June of 2021, 57 Texas grape growers and four grape processors filed suit against Bayer Crop Science, Monsanto, and BASF in state court in Jefferson County,

Texas. [Read Complaint [here.](#)] The lawsuit was related to alleged drift damage caused by the dicamba tolerant cotton cropping system sold by the defendants and sought \$114 million in economic damages and \$456 million in punitive damages. The plaintiffs brought strict liability for design defect and negligent design claims related to the design, development, and manufacturing of the dicamba resistant cotton cropping systems. Plaintiffs allege that the defendants acted as a joint venture with regard to the cropping system.

### **Litigation Background**

The plaintiffs brought the suit in Jefferson County, Texas, the home of BASF's nationwide dicamba manufacturing facility. None of the plaintiffs' property at issue is located in Jefferson County.

BASF removed the case to federal court in the Eastern District of Texas, citing diversity jurisdiction. The parties agreed to transfer the case to the Multidistrict Litigation *In re: Dicamba Herbicides Litigation* pending in the US District Court for the Eastern District of Missouri.

In January 2022, the US District Court for the Eastern District of Missouri granted the Plaintiffs' motion to remand the case back to state court because the case lacked complete diversity. In order for diversity jurisdiction to allow a case to be heard in federal court, the parties have to be citizens of different states. Here, one of the 57 plaintiffs was Hilltop Winery at Paka Vineyards, LLC ("Hilltop"), which is a citizen of New Jersey. Defendant BASF is also a citizen of New Jersey. BASF argued that Hilltop was improperly included as a plaintiff to destroy diversity jurisdiction and should, therefore, be disregarded in the court's analysis. The federal court disagreed, finding Hilltop to be in the same area, claiming the same damage as all of the other plaintiffs. Because diversity jurisdiction was not present, the case was remanded back to state court in Jefferson County. [Read order [here.](#)]

Back in state court, the defendants filed a motion to change venue, seeking to have the case transferred to the location where the allegedly damaged vineyards are located, rather than in Jefferson County. The trial court denied the motion. The defendants appealed.

### **Plaintiffs' Arguments**

Plaintiffs argued venue was proper in Jefferson County based on Texas Civil Practice and Remedies Code section 15.002(a)(1)'s permissive venue provision, which allows suit to be brought in a county in which all or a substantial portion of the events or omissions giving rise to the claim occurred. They claim this is the case because BASF "researched, designed, formulated, compounded, developed, tested, manufactured, produced, processed, assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised, and sold" its dicamba-based Engenia product to use with the Xtend crop system, and Engenia is manufactured exclusively in Jefferson County, Texas. Defendants argued this was untrue because none of the activities giving rise to the claims occurred in Jefferson County. While Engenia may be manufactured there, plaintiffs do not allege improper manufacturing, the defendants noted.

Alternatively, plaintiffs argued venue was proper under section 15.002(a)(3), which allows a suit to be brought in the county of the defendants' principal office in the state, because BASF manufactures Engenia in Jefferson County. They abandoned this argument at the hearing on the venue motion, admitting that Harris County was BASF's principal place of business in Texas.

Finally, Plaintiffs claim venue is proper as to Bayer and Monsanto under section 15.005, which provides that if venue is proper against one defendant, the court has venue of all defendants in all claims or actions raising out of the same transactions or occurrence. Defendants claim this is irrelevant because Jefferson County venue is not proper to any of the defendants.

### **Defendants' Arguments**

Defendants argue that the proper venue is the counties where the vineyards are located per Texas Civil Practice and Remedies Code section 15.011 as this claim is based on damage to real property. Plaintiffs claim this statute is designed for disputes related to title and ownership of land and does not apply in this products liability case.

## Beaumont Court of Appeals Opinion

The Beaumont Court of Appeals reversed and ordered the case be transferred to the counties wherein the plaintiffs' vineyards are located. [Read order [here](#).]

To establish mandatory venue under section 15.011, a party seeking transfer must show all or part of the property is located in the county of transfer and the suit is one of the actions described in section 15.0011, which states "actions for recovery of real property or an estate or interest in real property, partition of real property, to remove encumbrances from the title to real property, *for recovery of damages to real property*, or to quiet title to real property shall be brought in a county in which all or part of the property is located." (Emphasis added.)

The court found this case is about the recovery of damages to real property. "The [plaintiffs] are suing for cumulative permanent damage to farmland, not merely for damages to a seasonal grape crop." Further, the court noted, "the [plaintiffs] seek to recover from the [defendants] damages the defendants' dicamba-based seed system inflicted on the vineyards." Perennial crops and trees were considered by courts to be land under a prior version of the statute, and this court agreed.

Thus, the court ruled that "a suit for damages to vineyards and grape crops is a suit for recovery of damages to real property" and should be filed in the counties where the plaintiffs' real property is located. It remanded the case to the trial court to proceed with this transfer.

Do note, this decision was issued on November 17, 2022, so the plaintiffs are still within the window of time to seek review by the Texas Supreme Court. (Southwest FarmPress November 29, 2022)

<https://www.farmprogress.com/grapes/court-grants-motion-change-venue-dicamba-lawsuit>

## CEU Meetings

Please note that many of these meetings are now being done virtual. Please contact the meeting host directly if you have any questions.

### Date: December 5, 2022

Title: East Central Pesticide Conference

Location:

Contact: Adair County Extension Jennifer  
(918) 696-2253

CEU's:	Category(s):
1	1A
1	10

### Date: December 6, 2022

Title: There's a Fly in My Soup – IPM in Restaurants

Location: US Environmental Protection Agency (Virtual)

Contact: Dr. Marcia Anderson (908)-577-2982  
<https://register.gotowebinar.com/register/7650471600249648652>

CEU's:	Category(s):
2	7A
2	8
2	10

### Date: December 6, 2022

Title: Cross Timbers Ag Producers Meeting

Location: Lincoln County

Contact: Cody Linker (918)-258-0560

CEU's:	Category(s):
7	1A
2	6
7	10

**Date: December 8, 2022**

Title: KPCA/MPMA Joint Winter Conference & Exhibition

Location: Independence, MO

Contact: Spencer Duncan KCPA (785) 271-9220

<https://kpcawildapricot.org/events>

CEU's:	Category(s):
7	7A
7	7B

**Date: December 13, 2022**

Title: Pesticide Applicator CEU Training

Location: OSU Extension Enid OK

Contact: Josh Bushong OSU Extension (580) 237-7677

CEU's:	Category(s):
2	1A
2	10

**Date: December 13, 2022**

Title: How The Mesonet Can Assist with Pesticide Application & ODAFF Rules and Regulations

Location: McClain County OSU Extension

Contact: Justin McDaniel OSU Extension McClain County (405) 527-2174

CEU's:	Category(s):
2	1A
2	3A
2	6

**Date: December 20, 2022**

Title: Herbicide Resistance & Record Keeping

Location: McClain County OSU Extension

Contact: Justin McDaniel OSU Extension McClain County (405) 527-2174

CEU's:	Category(s):
2	1A
2	3A
2	6

**Date: December 13, 2022**

Title: OSU Certified Applicator CEU Conference IIIA  
Pest Management in Wheat

Location: OSU Extension Offices (Virtual)

Contact: Todd Baughman OSU Extension (580) 224-0623

CEU's:	Category(s):
3	1A
3	10

**Date: December 13, 2022**

Title: OSU Certified Applicator CEU Conference IIIB  
Pesticide Labels and Certified Applicator Testing

Location: OSU Extension Offices (Virtual)

Contact: Todd Baughman OSU Extension (580) 224-0623

CEU's:	Category(s):
3	1A
3	10

**Date: December 14, 2022**

Title: Target Specialty Oklahoma Fall Workshop 2022

Location: Reed Center Midwest City, OK

Contact: Jennifer Gonzalez 800-352-3870

CEU's:	Category(s):
2	3A
1	6
4	7A
1	7B
4	10

**Date: December 14-15, 2022**

Title: OSU Winter Crop School

Location: OSU Student Union Stillwater OK

Contact: Brian Arnall OSU Extension (405) 744-1722

[https://secure.touchnet.com/C20271\\_ustores/web/store\\_cat.jsp?STOREID=15&CATID=59](https://secure.touchnet.com/C20271_ustores/web/store_cat.jsp?STOREID=15&CATID=59)

CEU's:	Category(s):
2	1A

## ODAFF Approved Online CEU Course Links

### Online Pest Control Courses

<https://www.onlinepestcontrolcourses.com/>

### PestED.com

<https://www.pested.com/>

### Certified Training Institute

<https://www.certifiedtraininginstitute.com/>

### WSU URBAN IPM AND PESTICIDE SAFETY EDUCATION PROGRAM

<https://pep.wsu.edu/rct/recertonline/>

### CEU University

<http://www.ceuschool.org/>

### Technical Learning College

<http://www.abctlc.com/>

### All Star Pro Training

[www.allstarce.com](http://www.allstarce.com)

### Wood Destroying Organism Inspection Course

[www.nachi.org/wdocourse.htm](http://www.nachi.org/wdocourse.htm)

### CTN Educational Services Inc

[http://ctnedu.com/oklahoma\\_applicator\\_enroll.html](http://ctnedu.com/oklahoma_applicator_enroll.html)

### Pest Network

<http://www.pestnetwork.com/>

### Veseris

<http://www.pestweb.com/>

### AG CEU Online

<https://agceuonline.com/courses/state/37>

### Target Specialty Products Online Training

<https://www.target-specialty.com/training/online-training>

For more information and an updated list of CEU meetings, click on this link:

<http://www.kellysolutions.com/OK/applicators/courses/searchCourseTitle.asp> Find us on Twitter at @OkstatePestEd

## ODAFF Test Information

Testing will be done at testing centers in multiple locations around the state by PSI Services LLC.

For more information and instructions, please go to <https://bit.ly/3sF4y0x>.

**Reservation must be made in advance** at [www.psiexams.com/](http://www.psiexams.com/) or call **855-579-4643**

### PSI locations.

Oklahoma City 3800 N Classen Blvd, Ste C-20, Oklahoma City, OK 73118

Tulsa 2816 East 51st Street, Suite 101, Tulsa, OK 74105

McAlester 21 East Carl Albert Parkway (US Hwy 270), McAlester, Oklahoma 74501

Woodward 1915 Oklahoma Ave, Suite 3, Woodward, OK 73801

Lawton Great Plains Technology Center, 4500 West Lee Blvd Building 300- RM 308, Lawton, OK 73505

Enid Autry Technology Center, 1201 W. Willow Rd, Enid, OK 73703

Ponca City Pioneer Technology Center, 2101 N Ash, Ponca City, OK 74601

Norman Moore Norman Technology Center, 4701 12th Ave NW, Norman, Oklahoma, 73070

South Penn - Moore Norman Technology Center 13301 S. Pennsylvania, Oklahoma City, OK 73170

If you have questions on pesticide certification. Please email or call:

Kevin Shelton  
405-744-1060 [kevin.shelton@okstate.edu](mailto:kevin.shelton@okstate.edu) or

Charles Luper  
405-744-5808 [charles.luper@okstate.edu](mailto:charles.luper@okstate.edu)