

POLICY ON PLANT INCORPORATED PESTICIDES

The use of plant incorporated pesticides (PIPs), including those to protect the plant from pests and pesticides both, has become commonplace. A debate has continued on the national level as to what are the appropriate mechanisms to regulate these products or if any regulation is required for this technology. Some states regulate the products as pesticides, and register each product. EPA on the other hand does not believe the final end products to be pesticides, even though they do register the genetic combinations and traits. Current EPA policy requires that PIPs be labeled as pesticides to the seed producer/labeler level only up until they are packaged and labeled for retail sale or distribution. No labeling is required for seed offered for sale to end users. EPA has answered states through SFIREG that, once approved, these products are, "the safest products we regulate" and have asked that states not to inhibit the use of these products.

SLA positions on PIPs

DATCP has expressed to EPA and the other federal regulatory agencies involved, USDA and FDA, our belief that these products should be regulated as pesticides down to the end user level. In part this is to protect and preserve the technology, by making refuge and setback requirements fully enforceable. Having these products regulated would also help to protect conventional crops from pollen drift. DATCP is concerned that refuge and other requirements of use, now only subject to private contractual agreements between seed labelers and private growers, are largely unenforceable. DATCP is in no way a party to these contracts. Some states regulate these products as devices, but these plants do not meet the requirements of 40 CFR part 152.500, and even if they did, this designation exempts those plants, by definition, from regulation under FIFRA. Some states are attempting to regulate the use of these products through their seed regulations, but most of those relate only to labeling and purity of seed, not to use of a seed product.

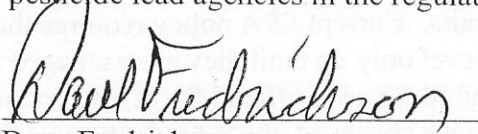
EPA definition

EPA has made clear in 40 CFR part 174.21, that "a plant incorporated protectant is exempt from the requirements of FIFRA, other than the requirements of § 174.71", which relates only to adverse effects reporting to EPA. Noting the regulatory stance of the Federal agencies, DATCP has determined that:

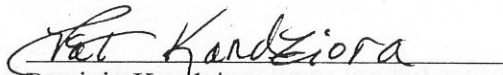
- ✓ • DATCP lacks subject jurisdiction to regulate PIPs that are exempt under 40 CFR part 174.
- ✓ • DATCP will not regulate these products as pesticides or pesticide devices, including registration as a pesticide or collection of registration fees, even if requested by a registrant.
- ✓ • DATCP will not issue experimental use permits for the testing or development of PIPs in Wisconsin. DATCP will defer to EPA and USDA to oversee these activities.

- Bureau of Agrichemical Management staff will not conduct use observations or inspections of sites under EPA-issued Experimental Use Permits, but may accompany USEPA staff or others with regulatory authority to inspect said sites.
- DATCP staff will continue to monitor EPA's status of PIPs and to seek a clear regulatory role for pesticide lead agencies in the regulation of these products as pesticides.

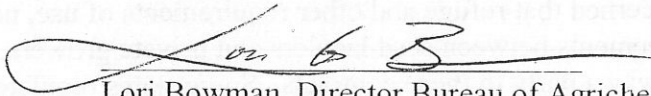
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