

Pesticide Labels Vs Liability Concerns in High Value Crops

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Special Registrations

- States have authority to issue Special Local Needs Pesticide Registrations
- Section 24 c of FIFRA
- ATCP 29.72 Wis. Adm. Code
- This process is for registering a new use, not already approved under FIFRA Sec 3

Special Local Needs Registration

- The product must have a section 3 registration and label
- If the same SLN is issued in >5 states EPA may question.
- If > 15 states issue a SLN-EPA will deny further Registrations
- No Unreasonable Adverse Effects

Special Registrations and Liability

- Most Special Registrations are for minor crops
- Low revenues for Registrants
- Many Minor crops are of very high value
- “Selling \$50 of product to treat a crop worth \$50,000”

24 c Request, April 2003

- Clopyralid for Strawberries by Dow Agrosciences on 4/23/2003
- Section 3 registration had been granted on 10/17/2002
- Risk Management Model by Dow, low sales volume and big risk of claims
- Pulled back from full label

24 c on Strawberries

- 24 c requests made to 11 states
- Most states filed with EPA
- Request to Wisconsin and Indiana were denied - Based on Sec 3 registration already accomplished
- 24 c request and labels included a Waiver of liability requirement

Liability Waivers

- Registrant X intends that this section 24 c label be distributed only to end users and growers who agree in writing to a waiver and release from all liability and indemnification by the user....

Liability Waivers

- Issue taken to SFIREG Pesticide Operations and Management Committee 4/2004
- EPA Legal Opinion that labels can not require a user to sign a waiver
- The use of Liability Waivers actually started in the NW, by state lead agencies and grower groups

Liability Issues

- Things had gotten way out of hand
- Registrants were using the SLN process to limit liability
- 24 c registrations granted for Sec 3 registered uses

Liability Issues

- Growers need Special Registrations
- Registrants Need to be concerned about Risk
- Requiring Written Waivers is not Allowed under Federal Guidelines
- Growers need to be made aware of risks

Possible Alternatives

- Incorporate The Risk and Liability statements into the 24 c Label
- Require Users to Log onto a web site to obtain labels and have a “licensing Agreement” type drop box
- Have Liability issues dealt with by a third party (e.g. Grower Group)

What Happens Next

- POM SFIREG Workgroup
- EPA will deny any Spec Reg For Sec 3 Uses
- EPA will deny Spec Regs that require a written waiver
- Bates Vs DowAgrosciences/US Supreme Court

Stinger®
EPA Reg. No. 62719-73

Postemergence Broadleaf Weed Control in Strawberry

(For Distribution and Use Only in the State of Wisconsin)

24(c) Special Local Need Registration EPA SLN No. WI_____

IMPORTANT – READ BEFORE USE!

Because of the POSSIBILITY that Use of Stinger® herbicide (the “Product”) on STRAWBERRY (the “Crop”) IN THE MANNER Described in this Section 24(C) Labeling COULD result in INJURY TO THE CROP and/OR yield reduction or Crop failure, USE THIS PRODUCT ONLY AFTER YOU HAVE READ AND ACCEPTED THE “SPECIAL CONDITIONS OF USE” AT THE END OF THIS LABELING!

If the Special Conditions of Use are not acceptable to you, return the unopened Product to your seller for a refund or use the Product for a different labeled use in accordance with the label affixed to the Product container.

The Special Conditions of Use are specified by the manufacturer of this Product and not the state of Wisconsin or the US EPA.

SPECIAL CONDITIONS OF USE

Dow AgroSciences (the “Manufacturer”) may not have sufficient phytotoxicity (crop safety) data with respect to the use of the Product on the Crop in the manner described in this 24(c) labeling or may have data demonstrating that, under certain conditions, the Product will cause injury to Crop and resulting yield reduction or Crop failure.

(2) they assume all risk of injury to the Crop and any resulting yield reduction or Crop failure arising from or relating to use of the Product on the Crop in the manner described in this Section 24(c); and

(3) will release and hold harmless, the Manufacturer, and all parties in the chain of distribution of Product, and their respective agents and representatives, from any and all losses, damages, claims, causes of action, expenses (including attorney's fees and court costs), relating to injury to the Crop and any resulting yield reduction or Crop failure arising from or relating to use of the Product on the Crop in the manner described in this Section 24(c) labeling

Special Registrations and Liability Issues

- Questions or Helpful Comments