

**From:** Jennings, Henry

**Sent:** Thursday, September 06, 2007 9:01 AM

**To:** Schlein, Paul B

**Subject:** FW: PHI-DAS comments on requirement for pesticide applicator's licenses

-----Original Message-----

**From:** Rood, Tracy [mailto:tracy.rood@pioneer.com]

**Sent:** Wednesday, September 05, 2007 9:18 PM

**To:** Jennings, Henry

**Cc:** Hunst, Penny (PL)

**Subject:** PHI-DAS comments on requirement for pesticide applicator's licenses

Hi Henry,

Regarding the Pioneer and Dow AgroSciences (DAS) Herculex Bt corn registrations in Maine, we noticed the section (copied below) on Licenses Required from the Board's draft rules on the website:

[http://www.maine.gov/agriculture/pesticides/pdf/board/agenda\\_documents/sept07/Draft\\_Chapter\\_41\\_Section%205.pdf](http://www.maine.gov/agriculture/pesticides/pdf/board/agenda_documents/sept07/Draft_Chapter_41_Section%205.pdf)

#### B. Licenses Required

I. No person shall purchase, or plant any plant-incorporated protectant product unless they have obtained a private or commercial pesticide applicator's license from the Board.

II. No person shall:

a. Distribute any plant-incorporated protectant product without a restricted use pesticide dealer's license from the Board; or

b. Distribute any plant-incorporated protectant product to any person who is not licensed as a private or commercial pesticide applicator by the Board.

This draft language is not in harmony with the language on the Maine Board of Pesticides Control's own website, which stipulates that a commercial license is required for any one of the following situations—none of which apply to the planting of Bt corn:

- Application of any restricted/limited use pesticide for purposes other than producing an agricultural commodity
- Use of any pesticide as a service for which compensation is received (examples include lawn care, pet grooming, tree & shrub care and pest control)
- Use of any pesticide on sites open to public use. Property is considered open to use by the public when the owner permits routine access by the public, even if a fee is charged for such use. Examples range from office and apartment buildings to golf courses and other outdoor recreation facilities.
- Use of any pesticide by a government employee as part of their job duties. Government employees include but are not limited to school, town, county, housing authority, water district, State, Federal and Defense officials.

Pioneer and DAS oppose a requirement for growers of Bt corn to obtain a private applicator's license for several reasons. First, from a legal and regulatory standpoint, an applicator's license is not needed. EPA has chosen, in practice, to regulate Bt corn seed as treated articles for the purposes of FIFRA, not as pesticides per se. "Treated Article" is defined in 40 CFR 152.25 as "An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use." In addition to paint and lumber, common examples include shower curtains, kitchen cutting boards, and conventional corn seed that are treated with pesticidal substance. Consistent with this interpretation, EPA does not require a pesticide label on a bag of Bt corn seed, and growers are not required to have a pesticide applicator's license anywhere else in the U.S. to plant Bt corn.

Second, the training and knowledge required to obtain and safely apply restricted or limited-use pesticides are not relevant to the planting and growing of plant-incorporated protectants since the pesticide is not directly handled. Third, many growers choose to have chemical pesticides applied by commercial applicators and therefore do not have their own license. Finally, neither the federal EPA, any other states, nor the registrants require our seed distributors to have a pesticide dealer's license to sell Bt corn. Imposing additional requirements on the sale of Bt seed versus conventional

seed could disrupt the distribution of seed to Maine's farmers.

We believe that a requirement to obtain/purchase a special license from the Board would likely prevent farmers from purchasing Bt corn, and would also be incongruous with the EPA actions at the federal level and in other states. A requirement for such a pesticide applicator's license in Maine for growers and/or dealers would likely render Pioneer and DAS unable to allow sales in Maine, which would prevent Maine farmers from accessing this technology.

Feel free to call me at 515-270-4036 to discuss further, and to share this e-mail with the board for the Sept. 7 meeting.

Regards,

Tracy Rood  
Registration Manager

This communication is for use by the intended recipient and contains information that may be Privileged, confidential or copyrighted under applicable law. If you are not the intended recipient, you are hereby formally notified that any use, copying or distribution of this e-mail, in whole or in part, is strictly prohibited. Please notify the sender by return e-mail and delete this e-mail from your system. Unless explicitly and conspicuously designated as "E-Contract Intended", this e-mail does not constitute a contract offer, a contract amendment, or an acceptance of a contract offer. This e-mail does not constitute a consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties.

Francais Deutsch Italiano Espanol Portugues Japanese Chinese Korean

[http://www.DuPont.com/corp/email\\_disclaimer.html](http://www.DuPont.com/corp/email_disclaimer.html)