Dicamba Injury: Professional Liability Insurance Perspectives

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Certified Crop Advisors Professionals?

❖ A professional is a person possessing specialized skills or knowledge who offer services for a fee.

❖ Belonging to a professional association and agreeing to a associational code of conduct or ethics indicates that one is a professional

❖ Certified Crop Advisors

- Pass comprehensive exams

- Have experience requirements

- Sign and agree to uphold the CCA Code of Ethics

❖ Certified Crop Advisors are professionals!

Professional Liability

❖ Professional applicators are held to a higher standard than the label. They are expected to use the latest science and experience to inform their actions.

❖ Written procedures are important. How did the sprayer interpret the label and what procedures were created as a result. This gives insight into preparation and interpretation that may justify actions.

Professional Liability Insurance

❖ Covers legal expenses when a 3ʳᵈ party claims financial damages because the insured's professional advice or service.

❖ Synonymous with

- Malpractice Insurance for health care professionals
- Errors and Omissions Insurance for Accountants, Architects and other professionals.

Professional Liability Insurance

Assists when clients allege damages due to:

❖ Negligent professional services,

❖ Failure to meet contractual obligations,

❖ Incomplete work or work not completed on time,

❖ Professional mistakes.

2018 EPA Label for Dicamba

❖ Labeled as a Restricted Use Pesticide –
  ▪ permits only <u>certified applicators</u> with special training, and those under their supervision, to apply dicamba;
  ▪ dicamba-specific training for all certified applicators to reinforce proper use;

❖ Requiring <u>farmers</u> to maintain specific records regarding the use of dicamba products to improve compliance with label restrictions;

❖ Limiting applications to when maximum wind speeds are below 10 mph to reduce potential spray drift;

❖ Reducing the times during the day when applications can occur;

❖ Including tank clean-out language to prevent cross contamination; and

❖ Enhancing susceptible crop language and record keeping with sensitive crop registries to increase awareness of risk to especially sensitive crops nearby.

https://www.epa.gov/ingredients-used-pesticide-products/registration-dicamba-use-genetically-engineered-crops

Missouri label for Dicamba

Adds to the EPA label the following requirements

- ❖ Only certified applicators can apply dicamba
- ❖ Applicators must complete mandatory Dicamba training provided by the University of Missouri Extension
- ❖ Training verification must be presented to the retail establishment before taking possession of FEXAPAN, XTENDIMAX and ENGENIA.
- ❖ Applicators must complete an online Dicamba Notice of Application form daily prior to each application.
- ❖ Applications only permitted from 7:30 a.m. to 5:30 p.m.
- ❖ Applications stop after June 1 in SE MO; July 15 for remaining counties.

The Dicamba Label and Professional Liability

❖ Only certified applicators with special training are permitted to spray dicamba in-season. This indicates professional status.

❖ Specific records must be maintained.

- The best defense in a professional liability claim includes good documentation.

- Lack of required records/documents weakens a defense.

❖ Specific actions such as time of day and spray speed are given to accomplish specific outcomes (reduce chance of off-target movement). A professional might be expected to incorporate other knowledge to accomplish these desired outcomes.

Applicator Liability

"Farmers should note that the additional restrictions and information on dicamba labels shifts more responsibility for the product onto the <u>applicator</u>."

Peggy Hall, Asst. Professor, Agriculture and Resource Law

Ohio State University