Center for Chemical Regulation and Food Safety

Pesticides, Specialty and Minor Crops and Vulnerabilities

Presented To: California Specialty Crops Council

San Francisco, June 5, 2012

Who Is Exponent?

- International *Consulting* Firm 40+ years
- Offices in Washington DC and 19 other US and international cities
- www.exponent.com
- http://www.exponent.com/jim_barron/

Exponent-Consulting In:

- Multiple Diciplines Including
  - Health
  - Environmental
  - Food and Chemicals
  - 90 other Scientific and Engineering Fields.
- Exponent *is not* a law firm.
-

Specialty/Minor Crops and Pesticide Use

- Many Mind-Boggling Issues.
- Appearing, Disappearing, Changing.
- Domestic and International.
- Political and Scientific.
- Far-reaching down to the minutae.

Registrants and Specialty/Minor Uses
3 “Burning” Questions

- *Why are Registrants Reluctant to Support Specialty/Minor Crop Uses?*
- *How to deal with Registrant Liability Concerns?*
- *What is the Flow of Liability or “Who catches the monkey”?*

Registrant Support of Minor Uses

Supporting specialty/minor crop uses can be a challenging issue for a registrant.

-Product non-performance;

-High crop value+Low product sales = High business risk;

-Political Pressure to support a business that may result in business loss;

-Fear of Litigation due to non-performance or due to export trade irritants.

Registrant Support of Minor Uses

What Does It all Boil Down To For the Registrant??

-Fear of Significant Business Loss.

Encouraging Registrant Support of Minor Uses

Government and other Minor Crop Initiatives Have Been Very Effective.

-IR-4 provides an important link to the industry and reduces up-front registrant development costs.

-EPA has helped streamline the regulatory process and minimize regulatory barriers and time to market;

-Commodity organizations have helped educate the public and set priorities.

-These initiatives need to continue.

Registrant Support of Minor Uses Practical Reality

"At The End of the Day"

-Due largely to limited sales volume, few of these pesticide uses turn out to be profitable to registrants, therefore:

-Registrants have and will continue to cautiously support minor uses *that make business sense* from a domestic or global aspect.

-Registrants *will not always be able to agree* to support a desired specialty/minor crop use.

Registrant Support of Minor Uses

Parting Suggestions

-Recognize that the companies have legitimate business/legal/liability concerns.

-Keep talking to your company sales/tech and other reps.

-Continue working through and supporting your commodity organizations, IR-4 and other government agencies.

-Take time to maintain and update your own technical knowledge of what you do

Registrant Support of Minor Uses

Other thoughts:

-The internet removed nearly all remaining clear rules for operating a business.

-Today, managing a business is an hour-by-hour process of managing RISK.

-Today's management has to look at things from 30,000 feet and 1 inch at the same time.

-In organizations, middle management is fast becoming a thing of the past.

Dealing With Registrant Liability Concerns

1. The Product Label
2. Stewardship
3. Providing partial or full indemnity

Dealing With Registrant Liability Concerns

Product Labeling

-Many product labels work well for growers, but can't be interpreted or enforced by the government.

-Encourage the companies and regulatory authorities to provide *clear* and *enforceable* use direction.

-Use the product according to the label.

-Be sure of what you are doing.

Dealing With Registrant Liability Concerns

Stewardship

-Know your products and the labels. If anything isn't clear, get your PCA or company rep on the horn. Take it up with DPR or EPA if you have to.

-If your exporting, *know* what countries have MRL's for your crops and which ones don't.

-You are the customer; Make your pesticide registrant resource people earn their keep; -i.e. the larger companies have international people who can help.

Dealing With Registrant Liability Concerns

Stewardship

-If in doubt, and even if not, test your crop;

-Especially if the international MRL situation is unknown or vague.

-Ask your pesticide companies for credible labs, methods, other information;

-Know your shippers;

-Try to know where he's intending to ship your crops.

Some MRL Database Tools

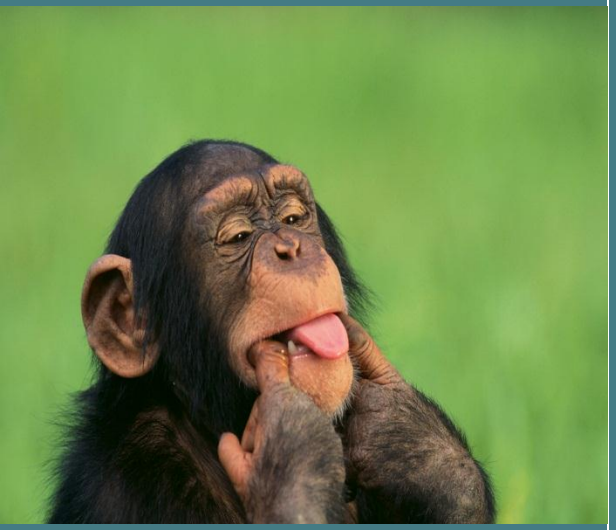
- **USDA MRL Database**
  http://www.mrldatabase.com/results.cfm
- **USDA Foreign MRL Database**
  http://www.fas.usda.gov/htp/MRL.asp
- **USA-Canada Database**
  http://www.uscanadagrowerprioritydatabase.com/default.cfm

Dealing With Registrant Liability Concerns

Indemnity-Third-Party Registrations

- Usually involves a SLN or FIFRA 24(c) label where an indemnity arrangement has been made with the basic registrant.
- Historically not a panacea and tried by Companies many times over the years, but…
- Third Party Registrations, Inc. in Florida is an example of making this work.
- This concept provides at least some contractualindemnity for the Companies.

“Who Catches The Monkey”



OR

What is the “Flow” of Pesticide Product liability?

“Who Catches The Monkey”

OR

What Did John Edwards know, and when did he know it ?????

Well, whatever happened, he sure didn’t Catch The Monkey……(at least not yet !!!)

“Who Catches The Monkey”

Flow of the Monkey

-Pest control advisor/Ext. Spec.

-Chemical Company (Rep(s)

-Distributor/ Retailer Chain

-Grower

-Produce Shipper

-Produce Retail Channel

-Consumer

“Who Catches The Monkey”

Flow of the Monkey

-Pest control advisor/Ext. Spec.

-Chemical Company (Rep(s))

-Distributor/ Retailer Chain

-Grower

-Produce Shipper

-Produce Retail Channel

-Consumer

“Who Catches The Monkey”

Flow of the Monkey

-Pest control advisor/Ext. Spec.

-Chemical Company

-Distributor/ Retailer Chain

-Grower

-Produce Shipper

-Produce Retail Channel

-Consumer

“Who Catches The Monkey”

Flow of the Monkey

-Pest control advisor/Ext. Spec

-Chemical Company

-Distributor/ Retailer Chain

-Grower

-Produce Shipper

-Produce Retail Channel

-Consumer

“Who Catches The Monkey”

Flow of the Monkey

-Pest control advisor/Ext. Spec

-Chemical Company

-Distributor/ Retailer Chain

-Grower

-Produce Shipper

-Produce Retail Channel

-Consumer

“Who Catches The Monkey”

Case # 1

-Litigation situation following a pesticide use.

-Grounds are illegal pesticide residues found in the crop after shipper and grower have been paid.

-Suit is filed by a large US Grocery store chain.

“Who Catches The Monkey”

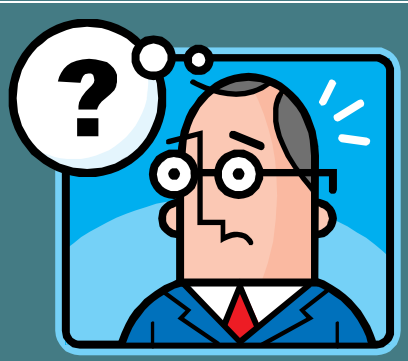
Case # 2

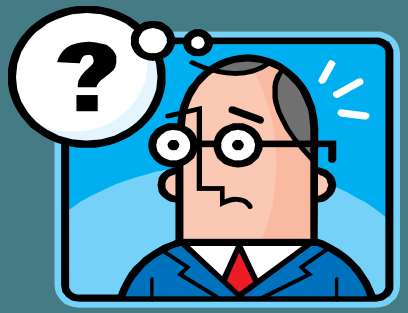
-Litigation situation following a pesticide use.

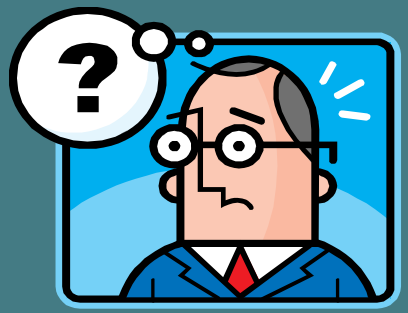
-Grounds are “illegal” pesticide residues found in the crop.

-Suit is filed by a shipper/exporter who got his shipment impounded at a foreign port.

“Who Catches The Monkey”







BOTTOM LINE

Who Knows ???!!!

In litigation,anything can happen!

What Can You Do to Avoid The Monkey?

Sorry,

The only Magic Bullet……...

AVOID LITIGATION !!!!!!!!!!!!

What Can You Do to Avoid The Monkey?

3

Recommendations

What Can You Do to Avoid The Monkey?

Do

Things

Right !!!

What Can You Do to Avoid The Monkey?

Don't

Be

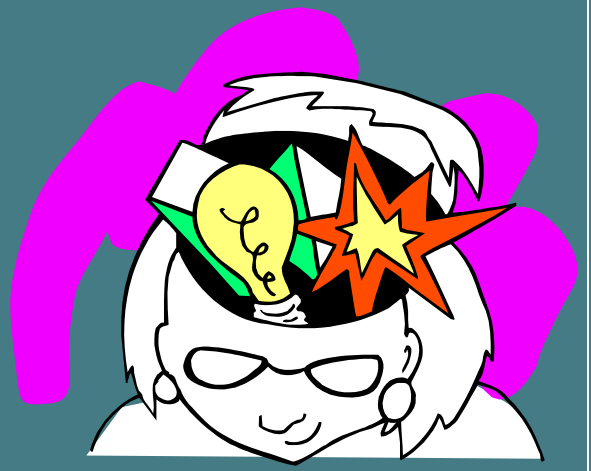
Shy !!

What Can You Do to Avoid The Monkey?

Be

Creative.

Problem-Solving



Time-Tested Methods

-Look at what has worked.

-Have workshops.

-Involve the right people.

-Think outside the box.

-Listen !!!!!

-Try something different.

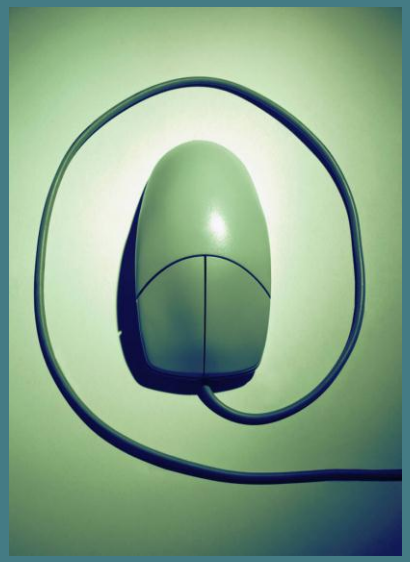
-Follow up !!!!

Homework Assignment

- If you could change something about working with registrants and/or the pesticide use liability situation, what would you propose?
- Who and What would this involve?
- How can you demonstrate this as a win-win for everyone?
- Tip: Be involved in the solution !!!!

- Email me at jbarron@exponent.com
- I promise an answer.

Thank You !!!



- Exponent is not a law firm and we do not give legal opinions.
- The views expressed in this presentation may not reflect those of Exponent, Inc.
- If you desire legal advice, please contact a competent attorney.
- If you need to discuss any technical or regulatory issues, contact us anytime.
- www.exponent.com

Questions?