Warnings On Buctril M Found Inadequate

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By Saskatchewan Court Of Queen's Bench

In its January 2011 decision in *Gulka Enterprises Ltd. v Bayer CropScience Inc. ("Bayer")*, the Saskatchewan Court of Queen's Bench ruled in favour of the producer, Gulka Enterprises Ltd. ("Gulka"), awarding compensation for damage resulting from chemical harm caused to Gulka's flax crop by Bayer's herbicide, Buctril® M ("Buctril M"), when tank-mixed with Fusion® at recommended rates to control weeds.

In 2005 Gulka sowed 860 acres to Vimy Flax. The majority of the seed was sowed into Gulka's fields at their optimal time and in optimal conditions. Before seeding was finished, heavy rainfall occurred in the area, and the last 100 acres were sowed in very wet conditions late in the planting season on June 20, 2005.

The fields eventually to be sprayed with a Buctril M/Fusion tank-mix were sowed at the optimal time and under good weather conditions, however these fields produced the lowest yields. Based on expert evidence, the court determined that the low yield was a result of applying Buctril M in conditions that were too hot and humid. Applying Buctril M in hot, humid conditions effectively stunted the growth of Gulka's flax and when tank-mixed with Fusion did not control the weeds, for which the tank mix was intended.

The Court found that the labels on the jugs were noticeably vague, and though they warned "Do not spray in hot, humid weather conditions.", the labels bore no details or parameters for the non-compliant hot, humid weather conditions. There was no specific warning not to spray if the temperature in the next 48 hours would be between 25C and 27C, nor was there a

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reference to the recommended humidex readings. This notwithstanding Bayer's knowledge of the risk of damage from high temperatures and humidity within 48 hours of spraying with Buctril M. The Saskatchewan 2005 Guide to Crop Protection in Gulka's possession contained details regarding conditions impacting the effect of various chemicals, but the Court noted that the front cover of the Guide states in bold letters "This publication is only a guide. Always refer to the product label for application details and precautions."

The Gulka decision demonstrates the importance of providing accurate written herbicide product warnings, especially when the details omitted might affect the consumer's choice to purchase the product in the first place. The courts will continue to rule in favour of producers when manufacturers capable of protecting themselves with proper, adequate warnings fail to do so. As well, given the use of Buctril M by Gulka in 2005, and the Court's decision six years later in 2011, inadequate or incomplete warnings can clearly create a ticking time bomb for herbicide manufacturers.

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