

## AG questions additional benefits of Monsanto's next generation of Roundup Ready Soybeans

As is well known in farming circles, Monsanto is in the process of rolling out their Roundup Ready 2 Yield soybean varieties. Monsanto's marketing task is to persuade farmers to switch from planting soybean varieties using the original Roundup Ready technology—a technology that farmers will be able to access for free after its patent expires in 2014—to the new version that would require continued payment of a fee to Monsanto. While the issue is not quite that simple (see our January 22, 2010 column, <http://agpolicy.org/weekcol/495.html>), the expiration of their patent does present Monsanto with a significant challenge.

Were farmers to continue to grow soybeans with the original Roundup Ready, Monsanto could see a significant drop in income. To entice farmers to switch to Roundup Ready 2 Yield soybeans, Monsanto has advertised that the new soybeans have an increased yield of 7-11 percent over similar varieties of the original. The new seeds were first available for the 2009 crop year.

That claim has caught the eye of West Virginia Attorney General Darrell McGraw in light of reports of farmers, university researchers, and others indicating much lower yields. Concerned that claims of a 7-11 percent yield increase might constitute false advertising, he issued a subpoena requiring Monsanto to produce a set of documents to substantiate their claim.

Monsanto subsequently removed specific yield claims from their advertising, but failed to come to an agreement with Attorney General McGraw over requests for confidentiality beyond that provided for in West Virginia law. As a result they did not produce the subpoenaed documents in the required time frame.

On October 25, McGraw filed a civil enforcement action naming the Monsanto Company for refusing to cooperate with his office's investigation of the sale of soybeans that tolerate the application of Roundup weed killer. "I want to ensure that there is a fair marketplace for West Virginia farmers," McGraw said. "They need to know if it is worth extra money to buy new products that may not live up to the hype."

The civil enforcement action petitions the Circuit Court of Kanawha County, West Virginia to order Monsanto "to appear in Court to show cause why it should not be ordered to comply in full with the investigative subpoena ...and, further, why it should not be enjoined from selling any product to any person or governmental entity in West Virginia until such

time as it fully complies with the subpoena."

If the Court were to enforce this civil enforcement action as it is written, Monsanto could find itself unable to sell not only Roundup Ready 2 Trait soybeans in West Virginia, but also Roundup Ready corn, and even Roundup itself for use by farmers, state agencies, and homeowners. The impact could be huge if Attorneys General in other states, particularly states like Iowa and Illinois where a large amount of soybeans are grown, were to follow the lead of Attorney General McGraw.

McGraw's investigation includes, but is "not limited to unfair competition, unfair or deceptive acts or practices, contracts, combinations or conspiracies in restraint of trade, monopolization, attempted monopolization, or use of monopoly for the purpose of excluding competition or controlling, fixing or maintaining the supply of and prices of glyphosate tolerant soybeans in the State of West Virginia."

The memorandum in support of the petition notes that the Supreme Court has held that an investigation can be embarked upon not simply because of an active case, but "merely on suspicion that the law is being violated, or just because it wants assurance that it is not."

The information being requested by McGraw includes the following:

- "Describe with specificity the patentable differences between the glyphosate tolerant soybeans you market as Roundup Ready and Roundup Ready 2 Yield.
- "Describe with specificity the difference in 'promoters' or 'genetic switches' used by Monsanto in its glyphosate tolerant soybeans and technology marketed as Roundup Ready and Roundup Ready 2 Yield that activate the glyphosate tolerant gene....
- "Identify all soybean varieties containing Roundup Ready 2 Yield that in studies, trials, or other tests conducted by Monsanto or others failed to yield 7-11 percent more than the soybean varieties containing Roundup Ready against which the Roundup Ready were compared....[And]
- "State whether Monsanto has received any information, statement, or communication,

Cont. on p. 2

**Cont. from p. 1**

written or oral, from any seed company, farmer, or any other individual or entity that contains a complaint relating to price, disease susceptibility, performance or yield of soybean varieties containing Roundup Ready 2 Yield. If the response is yes, then identify and describe each item of information, statement or communication; the seed company, farmer or other individual or entity from which Monsanto received communication; and provide an address, telephone number and principal place of business for the individual or entity identified."

Attorney General McGraw also asked for copies of any communications among Monsanto executives and employees "concerning the effects on Monsanto's earnings or share price of any and all studies, trials or other tests conducted to test or compare yields of soybean varieties containing Roundup Ready 2 Yield with yields of soybean varieties containing Roundup Ready in which Roundup Ready 2 Yield failed to achieve the purported 7-11 percent yield gain over soybean varieties containing Roundup Ready referred to in Monsanto's advertisements and marketing materials for Roundup Ready 2 Yield.

He also requested "copies of documents related

to switching farmers, independent seed companies or others from Roundup Ready soybeans to Roundup Ready 2 Yield soybeans."

Monsanto responded that they "believe the West Virginia's Attorney General letter is based on a misunderstanding of our national marketing materials for Genuity Roundup Ready 2 Yield soybeans. Monsanto can provide data demonstrating the performance of the Genuity Roundup Ready 2 Yield trait. Ultimately, on-farm experience will let farmers determine what seed they want to plant and continue to use."

From a policy perspective, the documents requested by Attorney General McGraw contain the type of information that would provide for the symmetry of information between the seller (in this case, Monsanto) and the buyers (in this case, farmers) that is assumed in economic theory. With this information and access to generic glyphosate tolerant soybeans, farmers would truly be able to "determine what seed they want to plant and continue to use."

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