Dicamba Status

- Dicamba has been around for decades (i.e. Banvel), but because of volatility, dicamba was not approved for post-emergent use on soybeans and cotton.

- Monsanto, BASF, and DuPont have developed genetically modified versions of soybeans and cotton that are dicamba tolerant. Have also sought to reduce volatility.

- For 2017 crop year, EPA approved formulations of dicamba for use over the top of dicamba-resistant plants (approval through November 2018).

<table>
<thead>
<tr>
<th>Registrant</th>
<th>Product</th>
<th>Registration Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bayer</td>
<td>Xtendimax with Vapogrip Technology</td>
<td>EPA Reg. No. 524-617</td>
</tr>
<tr>
<td>BASF</td>
<td>Engenia</td>
<td>EPA Reg. No. 7969-345</td>
</tr>
<tr>
<td>Corteva</td>
<td>FeXapan</td>
<td>EPA Reg. No. 352-913</td>
</tr>
</tbody>
</table>
Dicamba Status

• Environmental groups filed January 11, 2019, petition for review in 9th Circuit challenging the registration.

No. 19-7015
UNited States Court of Appeals
For the Ninth Circuit

National Family Farm Coalition, et al.,
Petitioners,
v.
United States Environmental Protection Agency, et al.,
Respondents,
and
Monsanto Company,
Intervenor-Respondent.

On Petition for Review from the United States Environmental Protection Agency

Dicamba Status

• On June 3, 2020, Ninth Circuit issued its bombshell ruling ordering immediate vacatur of the EPA’s registrations.
  • Immediate state of uncertainty and confusion for farmers.
  • Most states allowed farmers to spray until hearing more from EPA. At least two states ordered an immediate halt to sale and use of the product for OTT use.
  • EPA issued a “cancellation order” on June 8.
Dicamba Status

- The “cancellation order” provides that the dicamba-based products may no longer be distributed or sold, except in a very narrow circumstance.
  - Commercial applicators with stock on hand may continue to use the product on hand. This may involve “sale” and “distribution” to get the product to the farmers’ fields.
  - Farmers and private applicators may use their stock on hand and apply it to their fields, in accordance with the prior label instructions.
  - All uses must stop by July 31.

Dicamba Status

- Last last night, the petitioners filed an emergency motion to enforce the vacatur and hold EPA in contempt.
  - They argue that EPA acted outside of its authority in issuing the “cancellation order” and that the court’s mandate had made all use of OTT dicamba unlawful.
  - All eyes will be on the court to see what happens next. Farmers are authorized under current EPA guidance to continue use unless and until the court grants relief to petitioners.
COVID-19 Update

Possible COVID-19 Assistance for Farms

- USDA Coronavirus Food Assistance Program
- Paycheck Protection Program
- EIDL Loans
- Economic Impact Payments
- Employee Retention Credit
- Payroll Deferral
- Families First Coronavirus Protection Act
- Other Tax Provisions
- Tax Return Delays
- Unemployment
Paycheck Protection Program Loans

PPP Update – Still Money Available

• $349 billion initially committed to this program
  • Largest prior 7(a) program was $28 billion

• H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act signed into law on April 24 added additional $310 billion.
  • Self-employed guidance had just come out.
  • Lenders were just feeling assured that ag businesses were not going to be penalized.
    • Will not impact eligibility for Coronavirus Food Assistance Program.
  • Some loan proceeds were returned and added back.
PPP Update – June 6 (loans can be made through June 30)

Amount of Funding Remaining

$130,681,819,671

Available funds captures approvals net of cancellations as well as loan increases, decreases, and reinstatements. This amount accounts for statutory program costs.

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PPP Loan – Maximum Amount

- During the covered period, the loan amount is the lesser of:
  - $10,000,000 or
  - 2.5 times average monthly “payroll costs” (prior twelve months or 2019 calendar year), plus any refinanced EIDL received after January 31, 2020 through April 3.

- Those not in business between February 15, 2019, and July 31, 2019 calculate average monthly payroll costs based upon the period beginning January 1, 2020 through February 29, 2020.

- Seasonal employers may calculate the average monthly payroll costs based on the 12-week period between February 15, 2019 and June 30, 2019, or, alternatively, from March 1, 2019 through June 30, 2019.
PPP Loan – Allowable Uses

- Owner compensation
- Employee payroll costs (including health care and retirement)
- Mortgage Interest, Rent, and Utility Payments
  - Mortgage interest payments (but not prepayments or principal payments) on business mortgage on real or personal property
    - e.g., interest on mortgage for the warehouse purchased to store business equipment or interest on auto loan for vehicle used to perform your business
  - Business rent payments
    - e.g., warehouse where you store business equipment
  - Business utility payments
    - e.g., cost of electricity in warehouse you rent or gas you use driving business vehicle.
- Interest payments on other debts incurred before 2/15/20 (not forgivable)

PPP Loan – Forgiveness

- Hallmark of PPP loan is that it is forgivable if properly used.
  - Forgiveness application (with instructions) released 5/15, forgiveness IFR released 5/22, no FAQs
  - IFR really just mirrored application and did not give much more detail.
  - Lots of frustration regarding the lack of guidance and the complexity of the form.
    - Big call to have automatic forgiveness of loans below a certain amount.
      - Would not happen for some time, if at all.
EIDL Loan

- Economic Injury Disaster Loan (7(b) SBA loan)
- H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act signed into law on April 24.
  - Removed restriction preventing agricultural businesses from applying and receiving EIDL loans.
  - Even though $50 billion was added to general EIDL fund and $10 billion was added to advance fund, backlog of unprocessed EIDLs prevented any new applications.
    - In response, SBA opened an agriculture-only window on May 4 (now open to everyone again)

The terms of the COVID-19 EIDL loans are as follows:
- Loans up to $2,000,000 (based upon economic injury suffered)(Seems to be $150,000 cap)
- Interest rate = 3.75% for a small business and 2.75% for a non-profit
- Maximum term is 30 years
- SBA determines repayment period and monthly payments
- EIDL loans are not forgiven (except for an emergency advance explained below)
- Loans with a principal balance greater than $25,000 must be secured by collateral
- The CARES Act waives a personal guaranty when the EIDL loan is less than $200,000
- Loan payments are deferred for 12 months
- No application fee
**EIDL Loan**

EIDL Advance:
- $1,000 per employee
- Not repaid
- Was supposed to have been received within 3 days

- How do these interact with Paycheck Protection Program?
  - Must use for different purposes
  - EIDL advance reduces PPP forgiveness (line 11 of forgiveness application)

**Economic Impact Payments**

- Law calls them “recovery rebates”
  - IRS has named them “economic impact payments”

- $1,200 for eligible individuals, $2,400 for joint filers
  - $500 for qualifying child (< 17 years)
  - Must have social security numbers

- “Eligible individual” does not include:
  - Nonresident aliens, individuals who can be considered dependents, or Estates or trusts

- Phased out by five percent of amount by which taxpayer’s AGI exceeds:
  - $150,000 for joint return filers
  - $112,500 for head of household
  - $75,000 for other taxpayers
Economic Impact Payments

- Reconciliation on 2020 return will be taxpayer friendly:
  - The amount of the 2020 rebate credit will be reduced (but not below zero) by the aggregate refunds or credits made or allowable through the advance refund credit.
    - With joint filers, half of each credit is treated as made or allowed to each individual.
  - Dependent who becomes independent in 2020 will get the $1,200 credit when filing 2020 return.
  - Taxpayer who exceeds AGI in 2020, but not 2019, will not have to pay credit back.
  - Parents received $500 check for children who age out in 2020. They will not have to pay it back.
  - Parents will receive $500 credit for children born in 2020 in 2021.

Employee Retention Credit
Employee Retention Credit

- **Not allowed if business receives a PPP loan** / Can’t count Work Opportunity Credit wages
- Section 2301 of the CARES Act allows “eligible employers” a **refundable payroll tax credit equal to 50 percent of qualified wages paid to each employee for each calendar quarter during the COVID-19 crisis.**
  - Applies to qualified wages paid after March 12, 2020, and before January 1, 2021
  - The qualified wages which may be taken into account cannot exceed $10,000 per employee for all quarters (maximum credit is $5,000 per employee)
- The credit is allowed against applicable employment taxes (6.2% employer’s share) on the qualified wages (reduced by any credits taken under the Families First Coronavirus Response Act), but balance is refundable.

What is the Employee Retention Credit?

The Employee Retention Credit is designed to encourage businesses to keep employees on their payroll. The refundable tax credit is 50% of up to $10,000 in qualified wages paid to an employee by an eligible employer experiencing economic hardship related to COVID-19. This credit is for wages paid from 3/13/2020 through 12/31/2020.

The credit is available to all employers regardless of size, including tax-exempt organizations.

**EXCEPTIONS**

1. The employer’s business is fully or partially suspended by government order due to COVID-19 during the calendar quarter.
2. Businesses that receive a Small Business Interruption Loan under the Paycheck Protection Program.

Eligible employers must fall into one of two categories:
Families First Coronavirus Response Act

• H.R.6201, Effective April 1, 2020
• Temporary expansion of FMLA
• The law requires most private employers with fewer than 500 employees to provide emergency paid sick leave (Emergency Paid Sick Leave Act) and emergency paid family and medical leave (Emergency Family Medical Leave Expansion Act) to their employees for coronavirus-related absences.
• It also creates a corresponding refundable paid sick leave credit and paid child care leave credit for these employers.
• Also available to the self-employed.
# FFCRA – Paid Sick Leave Credit

<table>
<thead>
<tr>
<th>Type of Credit</th>
<th>IF an employee is unable to work because:</th>
<th>Then</th>
</tr>
</thead>
</table>
| Paid Sick Leave Credit | • They’re subject to a COVID-19 quarantine or isolation order.  
                           • They’re in self-quarantine because of COVID-19.  
                           • They have COVID-19 symptoms and are seeking a medical diagnosis. | The credit is at the employee’s regular rate of pay, up to $511 per day and $5,110 in total up to 80 hours. The employer is also eligible for a credit of the employer’s portion of Medicare tax expenses for the employee. |
|                        | • They’re caring for someone who is subject to a COVID-19 quarantine or isolation order, or for someone who is in a self-quarantine because of COVID-19.  
                           • They’re caring for a child whose school or place of care is closed due to COVID-19.  
                           • They’re caring for a child whose child care provider is unavailable due to COVID-19. | The credit is for two-thirds of the employee’s regular rate of pay, up to $200 per day and $2,000 in total, for up to 80 hours. The employer is also eligible for a credit of the employer’s portion of Medicare tax and the related qualified health plan expenses for the employee. |

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# FFCRA – Paid Family Leave Credit

<table>
<thead>
<tr>
<th>Type of Credit</th>
<th>IF an employee is unable to work because:</th>
<th>Then</th>
</tr>
</thead>
</table>
| Family Leave Credit     | • They’re caring for a child whose school is closed due to the COVID-19.  
                           • They’re caring for a child whose place of care is closed due to the COVID-19.  
                           • They’re caring for a child whose child care provider is unavailable due to COVID-19. | • This credit is equal to two-thirds of the employee’s regular pay, capped at $200 per day or $10,000 in total.  
                                                                                  • Up to 10 weeks of qualifying leave can be counted toward the Family Leave Credit. This can be combined with the sick leave credit, so an employer could be entitled to a credit for pay for up to 12 weeks – 2 weeks of sick leave and 10 weeks of family leave.  
                                                                                  • Eligible employers are entitled to an additional tax credit for the employer’s portion of Medicare tax on the wages and the related qualified health plan expenses for the employee. |

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**Center for Agricultural Law & Taxation**

**Iowa State University**
Delayed Payroll Taxes

• Can now take advantage of this provision even if you receive a positive decision on PPP loan forgiveness (PPPFA)

• Section 2302 of the CARES Act allows employers to temporarily defer payment of the employer’s portion of social security and RRTA payroll taxes (6.2%).
  • It provides the same opportunity to self-employed individuals for ½ of the SS portion of the payroll tax.

• The requirement to deposit these taxes is delayed through the end of 2020. The delayed taxes must then be repaid in two equal installments, one due by December 31, 2021, and the other due by December 31, 2022.
  • Use caution regarding the future balloon payment!

Retirement Plan Changes

• Section 2203 temporarily waives required minimum distributions for 2020
  • This applies to ALL RMDs, even those for beneficiaries.
  • If someone already took their RMD, remember the 60-day recontribution rule.
    • Using the 60-day recontribution rule prevents you from using it again within a one-year time period.
    • If outside of that window, no relief at this time unless it qualifies as a coronavirus-related distribution.
IRS Delays

- On May 29, IRS issued Notice 2020-35, expanding reporting deadlines mainly for various employee benefit plans.
- On April 9, 2020, IRS issued Notice 2020-23, which significantly expands the deadline relief for filings and payments earlier provided through Notices 2020-18 and 2020-20.
- Applies to taxpayers with a filing or payment deadline on or after April 1, 2020, and before July 15, 2020, for the following:
  - Individual income tax payments and return filings
  - Calendar year or fiscal year corporate income tax payments
  - Calendar year or fiscal year partnership return filings
  - Estate and trust income tax payments and return filings
  - Estate and generation-skipping transfer tax payments and return filings
  - Gift and generation-skipping transfer tax payments and return filings on Form 709
  - Exempt organization business income tax and other payments and return filings
  - Excise tax payments on investment income and return filings on Form 990-PF
  - Quarterly estimated income tax payments

Unemployment

- Unemployment through Pandemic Unemployment Assistance Program may be an option for some farmers and small business owners
- Not available if you received a PPP loan
Indirect Discharges May Need NPDES

• County of Maui v. Hawaii Wildlife Fund, No. 18–260 (2020)

• Does the Clean Water Act require a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater?

  • In County of Maui, the Ninth Circuit ruled that the county had violated the CWA by discharging pollutants from a point source into navigable waters without an NPDES permit.
  • Point sources—wastewater injection wells—did not discharge the pollutants directly into the navigable water. Rather, the county injected the pollutant (treated wastewater) into groundwater, which carried it to the navigable water.
  • Ninth Circuit applied “fairly traceable” standard.

• The Clean Water Act forbids “any addition” of any pollutants from “any point source” to “navigable waters” without an appropriate permit from the EPA.

  • We agree that statutory context limits the reach of the statutory phrase “from any point source” to a range of circumstances narrower than that which the Ninth Circuit’s interpretation suggests. At the same time, it is significantly broader than the total exclusion of all discharges through groundwater described by Maui and the Solicitor General.
  • “virtually all water” v. “move the pipe back a few yards”
Indirect Discharges May Need NPDES

- County of Maui v. Hawaii Wildlife Fund, No. 18–260 (2020)

- We hold that the statute requires a permit when there is a direct discharge from a point source into navigable waters or when there is the functional equivalent of a direct discharge. A list of nonexclusive factors “may prove” relevant:
  - Transit time
  - Distance traveled
  - Nature of the material through which the discharge traveled
  - Extent to which the pollutant is diluted or chemically changed
  - The amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the point source
  - The manner by or area in which the pollutant enters the navigable waters
  - The degree to which the pollution (at that point) has maintained its specific identity

Dissent by Justice Alito (3 Justices dissented):
- The Court’s rule does nothing to guide “middle instances.”
  - Except in extreme cases, dischargers will be able to argue that the Court’s multifactor test does not require a permit. Opponents will be able to make the opposite argument. Regulators will be able to justify whatever result they prefer in a particular case. And judges will be left at sea.
  - If the Court is going to devise its own rules, instead of interpreting those enacted by Congress, it might at least adopt rules that can be applied with a modicum of consistency. Here, however, the Court makes up a rule that provides no clear guidance and invites arbitrary and inconsistent application.
Indirect Discharges May Need NPDES


- What does this mean for agriculture?
  - More litigation
  - Testing the boundaries of the requirements…
  - More federal regulation of nonpoint source pollution?

Navigable Water Protection Rule

- *Published April 21*

- Defines “Waters of the United States” for purposes of the CWA. When are permits needed:
  - Dredge and fill / wetlands
  - Discharge pollutant
- Eliminates “significant nexus test,” which had again become the default rule after Clean Water Rule was repealed.
Navigable Water Protection Rule

• Narrows scope of WOTUS:
  
  • Tributaries include perennial and intermittent rivers and streams that contribute surface flow to traditional navigable waters in a typical year.
  • Adjacent wetlands must actually abut the jurisdictional waters or have a direct hydrological surface connection to the jurisdictional water in a typical year (30 years of data)
  • No groundwater, ephemeral streams, storm water runoff, farm and most roadside ditches, prior converted cropland (definition clarified)

• Clarifies definition of prior converted cropland

• Lawsuits have already begun…

Updating Resources – Ever Changing

• www.calt.iastate.edu
CFAP & Other Gov’t Payments, Crop Costs & Revenue Trends, and Iowa Avg. Cash Rents vs. Land Value Trends

June 12, 2020

Steven D. Johnson
Farm & Ag Business Management Specialist
(515) 957-5790
sdjohns@iastate.edu
www.extension.iastate.edu/agdm
Federal Government Payments & Subsidies

• 2020 CFAP Payments
  – Not to exceed 50% of 2019 Production or the Unpriced Bushels as of Jan. 15, 2020 (lesser of the two) X 50%
  – Approx. $30/A Corn
  – Approx. $12/A Soybeans

• 2019 MFP Payments
  – $67/A average based on 2019 planted acres, 3 total payments received in Aug., Nov. and Feb. ’20

• 2018 Farm Bill (Implemented with 2019 Crop)
  – ARC/PLC Payments
    • 2019 Corn = $12.75/A (PLC Old Yield) paid in Oct. ’20
    • 2020 Corn = $65/A (PLC New Yield) paid in Oct. ’21
    • 2020: Soybeans = $10/A (ARC-CO) paid in Oct. ‘21
    • 2021: Corn = $35/A (PLC New Yield) paid in Oct. ’22

• Crop Insurance Subsidies
  – Varies by farm’s Actual Production History (APH), level of coverage, unit structure, etc.
  – Approx. $50/A for Corn
  – Approx. $30/A for Soybeans

Iowa Average Corn Costs & Returns
Corn Following Soybeans
(2019 through 2021)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yield per acre</td>
<td>198</td>
<td>198</td>
<td>198</td>
</tr>
<tr>
<td>Price per bushel</td>
<td>$3.60</td>
<td>$3.20</td>
<td>$3.40</td>
</tr>
<tr>
<td>Crop revenue</td>
<td>$712.80</td>
<td>$633.60</td>
<td>$673.20</td>
</tr>
<tr>
<td>ARC/PLC</td>
<td>$12.75</td>
<td>$65.00</td>
<td>$35.00</td>
</tr>
<tr>
<td>MFP/CFAP</td>
<td>$67.00</td>
<td>$30.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Crop insurance</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Gross revenue</td>
<td>$792.55</td>
<td>$728.60</td>
<td>$708.20</td>
</tr>
<tr>
<td>Total non-land costs</td>
<td>$446.00</td>
<td>$420.00</td>
<td>$420.00</td>
</tr>
<tr>
<td>Land &amp; Management Return</td>
<td>$346.55</td>
<td>$308.60</td>
<td>$288.20</td>
</tr>
<tr>
<td>Cash Rent Equivalent</td>
<td>$219.00</td>
<td>$222.00</td>
<td>$222.00</td>
</tr>
<tr>
<td>Net Return to Farmer</td>
<td>$127.55</td>
<td>$86.60</td>
<td>$66.20</td>
</tr>
</tbody>
</table>
### Iowa Average Soybean Costs & Returns

**Soybeans Following Corn**

(2019 through 2021)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yield per acre</td>
<td>55</td>
<td>55</td>
<td>55</td>
</tr>
<tr>
<td>Price per bushel</td>
<td>$8.50</td>
<td>$8.20</td>
<td>$8.40</td>
</tr>
<tr>
<td>Crop revenue</td>
<td>$467.50</td>
<td>$451.00</td>
<td>$462.00</td>
</tr>
<tr>
<td>ARC/PLC</td>
<td>$0.00</td>
<td>$10.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>MFP/CFAP</td>
<td>$67.00</td>
<td>$12.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Crop insurance</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td><strong>Gross revenue</strong></td>
<td>$534.50</td>
<td>$473.00</td>
<td>$462.00</td>
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<tr>
<td>Total non-land costs</td>
<td>$287.00</td>
<td>$266.00</td>
<td>$266.00</td>
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<tr>
<td><strong>Land &amp; Management Return</strong></td>
<td>$247.50</td>
<td>$207.00</td>
<td>$196.00</td>
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<tr>
<td>Cash Rent Equivalent</td>
<td>$219.00</td>
<td>$222.00</td>
<td>$222.00</td>
</tr>
<tr>
<td><strong>Net Return to Farmer</strong></td>
<td>$28.50</td>
<td>-$15.00</td>
<td>-$26.00</td>
</tr>
</tbody>
</table>

### Iowa Avg. Cash Rental Rates vs. Land Values

**2019-20 Statewide Averages**

- Cash Rent: **$222/A**
- Farmland Value: **$7,432/A**

\[
\text{Rent as Percent of Land Value} = 3.0\%
\]
Improving Your Farm Lease Contract C2-01
• Lease Termination C2-19
• Farmland Cash Rental Rate Survey C2-10
• Survey of Iowa Leasing Practices C2-15
• Computing a Cropland Cash Rental Rate C2-20
• Flexible Farm Lease Agreements C2-21
• Flexible Cash Rent Lease Examples C2-22
• Crop Share Leasing Provisions C2-30

www.extension.iastate.edu/agdm/wdleasing.html
Extension Farm Management Field Specialists

Farmland Leasing Education planned statewide for late July and August.

www.extension.iastate.edu/agdm/info/meetings.html

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