

Bringing Awareness to Third-Party Damage and Long-Term Actual Production History (APH) Calculations: Lessons Learned from Chemical Trespass Disputes

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The prevalence of formal disputes regarding off-target herbicide applications, i.e., chemical trespass via drift, seems to be increasing. During the process of measuring affected acreage and estimating damages due to claimed yield losses, remedies for longer-term scenarios affecting crop insurance coverage and premiums have been demanded. Specifically, farmers were concerned how claimed reduction in yield associated with alleged off-target application of herbicides will affect crop insurance premiums and coverage levels via actual production history (APH) for the next several years.

Some agricultural practitioners (e.g., farm operators, insurance specialists, economists) were unfamiliar with Paragraph 1310G of the Crop Insurance Handbook (USDA 2021a); therefore, we intend to bring awareness to the issue so that disputes can be mitigated. On page 214 of the 916-page document, the third-party damages issue with respect to chemical trespass is clearly described. Of the five third-party damage examples, the first example explicitly describes chemical trespass:

“Example 1: When a neighbor negligently applies chemicals and the resulting spray drift damages the insured’s crop. This would be considered third-party damage because the spray drift was outside of the insured’s direct control.” (USDA 2021a, page 214).

Although chemical trespass is not an insurable event, Paragraph 1310G allows APH to be calculated without being affected by potentially reduced crop yields due to third-party damages. Therefore, crop insurance premiums and coverage levels will not be adversely affected for cropping years 2018 to the present. However, this option is not automatic such that the farmer must take active steps to prevent third-party damages from impacting approved APH yield. The burden falls on the insured farmer to fill out a notice of loss with their approved insurance provider (AIP) as outlined in the policy and the Loss Adjustment Manual (USDA 2021b).

Details regarding third-party damage are publicly available although limited informational content over the last several years was found via internet search. Using search terms “third party damage APH” returns several commercial crop insurance informative articles on third-party damage and uninsurable unavoidable fire (UUF) plus the USDA (2021a) Crop Insurance Handbook. Similar social media searches indicated some activity in 2017 but virtually nothing since 2019; and majority of those point to broken website links. Although details in



Paragraph 1310G are publicly available especially if knowing where to look or who to talk to, knowledge of how to navigate chemical trespass has not been ubiquitous in the agricultural community.

Damages due to third-party activities, especially chemical trespass, remain largely unpreventable. Although avoiding disputes arising from chemical trespass are not likely simply by bringing awareness to Paragraph 1310G as it relates to third-party damages, arbitration and dispute resolution are hopefully simplified since the long-term ramifications of crop insurance premiums and coverage levels will not have to be debated.

Resources

US DEPARTMENT OF AGRICULTURE (USDA) RISK MANAGEMENT AGENCY (RMA) FEDERAL CROP INSURANCE CORPORATION (FCIC). 2021A. 2022 CROP INSURANCE HANDBOOK FCIC 18010-1 (11-2021) [HTTPS://WWW.RMA.USDA.GOV/-/MEDIA/RMA/HANDBOOKS/COVERAGE-PLANS---18000/CROP-INSURANCE-HANDBOOK---18010/2022-18010-1-CROP-INSURANCE-HANDBOOK.ASHX](https://www.rma.usda.gov/-/media/RMA/HANDBOOKS/COVERAGE-PLANS---18000/CROP-INSURANCE-HANDBOOK---18010/2022-18010-1-CROP-INSURANCE-HANDBOOK.ASHX)

US DEPARTMENT OF AGRICULTURE (USDA) RISK MANAGEMENT AGENCY (RMA) FEDERAL CROP INSURANCE CORPORATION (FCIC). 2021B. LOSS ADJUSTMENT MANUAL STANDARDS HANDBOOK: 2022 AND SUCCEEDING CROP YEARS. FCIC-25010(11-2020), FCIC-25010-1(03-2021), FCIC-25010-2(12-2021) [HTTPS://RMA.USDA.GOV/-/MEDIA/RMA/HANDBOOKS/LOSS-ADJUSTMENT-STANDARDS---25000/LOSS-ADJUSTMENT-MANUAL/2022-25010-2H-LOSS-ADJUSTMENT-STANDARDS-HANDBOOK.ASHX](https://rma.usda.gov/-/media/RMA/HANDBOOKS/LOSS-ADJUSTMENT-STANDARDS---25000/LOSS-ADJUSTMENT-MANUAL/2022-25010-2H-LOSS-ADJUSTMENT-STANDARDS-HANDBOOK.ASHX)

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