



STATE OF ARKANSAS  
ASA HUTCHINSON  
GOVERNOR

January 4, 2017

Mr. Otis Howe  
Arkansas State Plant Board, Chairman  
1 Natural Resources Drive  
Little Rock, Arkansas 72205

**Re: *Plant Board Regulation – Pesticide Use and Restriction***

Dear Chairman Howe,

On December 13, 2016, I received the proposed amended regulation from the Arkansas State Plant Board (the "Plant Board") entitled *Pesticide Use and Restriction*. I understand that the Plant Board worked diligently throughout the promulgation process on this proposed amended regulation, and for that, I commend you and the members of the Plant Board for your service to Arkansas and its agricultural community.

The purpose of this letter is to explain my analysis of this proposed amended regulation and how I came to my conclusion regarding its promulgation. I review all of the proposed rules and regulations for every executive agency in accord with Executive Order 15-02. Pursuant to this Executive Order, if I determine "that a rule or regulation unnecessarily burdens businesses, that rule or regulation shall not be submitted to a legislative committee of the General Assembly nor shall the rule or regulation become effective." As with all other proposed regulations, I reviewed and analyzed the Plant Board's proposed rule under this analysis.

Due to the public interest of this issue, I met with both the proponents for and the opponents against this proposed amendment, and I reviewed and considered all of the public comments submitted to the Plant Board and to my office. In determining whether the proposed amendment unnecessarily burdens businesses, I closely analyzed the three following issues because they were most frequently referenced in my meetings and in the public comments: (1) whether the Plant Board should completely ban dicamba due to its susceptibility to

volatility and drift; (2) whether the Plant Board should allow for the use of XtendiMax with VaporGrip technology as approved by the federal Environmental Protection Agency ("EPA"); and (3) whether the EPA's testing and approval is sufficient for the on-label use of VaporGrip technology in Arkansas.

After reviewing this rule, I first want to note that the Plant Board should have an adequate and an effective enforcement mechanism to deter the illegal application of chemicals. These illegal applications are undoubtedly a burden to the agricultural industry and farms across Arkansas. In light of this problem, I will urge the General Assembly to enact legislation amending the Plant Board's civil penalty under Arkansas Code Annotated section 2-16-203. Specifically, I will encourage the General Assembly to increase the current one thousand dollar (\$1,000) maximum civil penalty for misapplication to an amount that will actually serve as a deterrent for misapplication. I have been advised that throughout the summer months the Plant Board convened a subcommittee to study its civil penalty matrix and that it recommended the increase of the civil penalty maximum. I will ask for the legislature to seek the Plant Board's expertise and findings when establishing this increased maximum penalty.

In conclusion, it is my position that the Plant Board's proposed regulation will not unnecessarily burden businesses. Pursuant to Executive Order 15-02, I approve the promulgation of the Plant Board's proposed amendment. However, the methods that are used and the research on which the Plant Board relies in approving new technologies must be more clearly defined in order to provide more certainty to all companies attempting to introduce these technologies in Arkansas. To this end, I am tasking the Plant Board to submit a solution to me within forty-five (45) days, which provides clear rules to industry as to what the Plant Board expects in terms of prior study and testing by independent third party research.

I appreciate your service to our state, and I look forward to legislative approval of this submitted amendment to the *Pesticide Use and Restriction* regulation as well as the Plant Board's upcoming recommendations on improved procedures for testing and approval of new technologies.

Sincerely,  
  
Asa Hutchinson

cc: Secretary Wes Ward, Arkansas Department of Agriculture  
Director Terry Walker, Arkansas State Plant Board