

Seed Conditioners and Buyers Risk Prosecution for “Brownbagging”

Berthoud, CO (August 29, 2003) -- **AgriPro® Wheat** and other private seed companies, along with university seed agencies, are stepping up efforts across the country to thwart illegal sales of protected wheat varieties. Successful litigations from Texas to North Dakota have been made in recent months against sellers, and for the first time, even seed conditioners and buyers.

Earlier this year, AgriPro Wheat reached an out-of-court cash settlement with a Texas fertilizer and seed company for knowingly and illegally selling the federally-protected winter wheat variety Longhorn. In a separate case, the company settled with a grower and grain elevator operation in Arkansas for illegally selling a protected soft red winter wheat variety developed and owned by AgriPro.

In another case in North Dakota, charges were successfully brought against a seller, seed conditioner, and buyers for illegal transactions involving Gunner, a protected spring wheat variety developed by AgriPro Wheat.

Federal law prohibits the sale of protected varieties such as Longhorn and Gunner for reproductive purposes by unauthorized sellers, a practice commonly referred to as “brownbagging.” The law makes it illegal to sell, for any planting purposes, protected varieties as seed labeled “Variety Not Stated” as a non-certified blend with another variety, or as pasture wheat.

The Plant Variety Protection Act (PVPA) has always allowed farmers to save seed of protected varieties for planting on their own land. Amendments to the PVPA in 1994 specified that no protected seed may be sold, conditioned, or purchased without the permission of the seed developer.

“As a seed company, we don’t relish being diverted by legal action. We’d much rather invest our time advancing wheat varieties and promoting the benefits of high quality certified seed. All we ask is a fair return for that investment,” says **Bill Kuntz**, AgriPro Wheat’s national marketing manager.

Most farmers and seed suppliers understand and abide by the federal seed law, Kuntz says, pointing out that a seed company’s interest in protecting its property rights can be compared to farmers who wish to protect their land against trespassing or illegal hunting. “Buying certified seed doesn’t entitle you to resell its production as seed to others, just as giving someone permission to hunt on your land doesn’t entitle them to bring in other hunters, or guarantee lifelong access to your land.”

RESOURCE SEEDS, INC.

Other seed companies are stepping up their actions against illegal seed sales as well, including **Syngenta Seeds**, which is pursuing six cases in the soft red winter wheat growing area of the U.S. Syngenta has successfully reached settlements in two cases, is close to resolving another, and is in the process of settling the others.

"I think the seed industry in general has stepped up against brownbagging the last few years. Our market research indicates that in the southern soft red winter wheat market, about one-third of seed used is certified seed sales, a third is farmer-saved seed, and a third is illegally-sold seed. Our goal is to stop the practice of illegally-sold seed, and convert this to good business from which the farmer, the dealer and we the seed company can all benefit," says **Phil Farmer**, Syngenta Seed's wheat product manager.

Public seed agencies are also focusing more attention on variety protection efforts. For instance, the Texas Agricultural Experiment Station is now conducting compliance audits and infringement notifications, says **R. Steve Brown**, program director of the **Texas Foundation Seed Service**.

Rather than focus on compliance, however, he prefers that the advantages of using certified seed be emphasized. "Research typically indicates a three to 10 bushel an acre yield advantage by using certified seed," says Brown. As well, the first year of a multi-year study at Oklahoma State University suggests certified seed is a benefit to forage production as well, including better emergence and seedling vigor.

Darrell Hanavan, executive director of the **Colorado Wheat Research Foundation**, says most in the wheat industry realize that the profit potential and market competitiveness of the wheat production sector is dependent upon private and public development of seed genetics research. He points out that many public wheat research programs today include a royalty with the sale of new varieties that is re-invested in research. "The development of novel traits and new varieties isn't feasible unless the R&D is protected," says Hanavan.

Kuntz says that most varieties developed and marketed today, public and private, are protected. "If in doubt, ask for a tag on the seed you buy. A legal seed purchase of a PVPA protected variety will come with a certified seed tag or label, just like a title in the purchase of a car. If a seed seller doesn't have a tag for it, it's probably illegal seed."

AgriPro Wheat is part of the Advanta USA seed group and is the largest commercial wheat seed developer in North America.