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TO: Board Members  
FROM: Board Staff  
RE: Issues with the Current Chapter 41 and *Bt*-corn, Refuge in the Bag

February 15, 2012

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With the recent registration of *Bt*-corn products with refuge in the bag (RIB), an issue arises with Chapter 41. Currently, Chapter 41 allows a non-*Bt*-corn grower to contact a neighboring *Bt*-corn grower prior to planting in order to negotiate a strategy to prevent pollen transfer. If no agreement is reached, and no refuge is required by the product label, Sec. 5(E)(I)(c)(iii)(2) requires the *Bt*-corn grower to maintain at least a 300-foot *Bt*-corn-free buffer to non-*Bt*-corn crops. Since the new RIB products include a refuge, Sec. 5(E)(I)(c)(iii)(2) may not apply (depending on interpretation).

If the Board determines that it is appropriate to retain the 300-foot buffer option for RIB products, two options that might be considered are:

- Amending Chapter 41 Sec. 5(E)(I)(c)(iii)(2) to read “if no spatial refuge is required, the *Bt*-corn grower shall maintain at least a 300-foot *Bt*-corn-free buffer to non-*Bt*-corn crops.”
- Amending Chapter 10 to define RIB as not being refuge for the purposes of Chapter 41

In the short term, the Board might consider drafting a policy defining RIB as not constituting a refuge for the purposes of Sec. 5(E)(I)(c)—given the intent of that section—and amend the rules the next time routine rulemaking occurs.