



# EPA Launches Endangered Species Bulletin Web Site

Under the Endangered Species Act (ESA), the government protects endangered and threatened plants and animals (listed species) and the habitats upon which they depend. The ESA requires federal agencies to ensure that any action it authorizes, funds or carries out does not “adversely impact” any listed species or “destroy or adversely modify” any critical habitat for that species.

The Environmental Protection Agency’s Endangered Species Protection Program (ESPP) helps promote the recovery of listed species. The ESPP is a program

designed to determine whether pesticide use in a certain geographic area may affect any listed species. If limitations on pesticide use are necessary to protect listed species in that area, the information is related through *Endangered Species Protection Bulletins*. These bulletins can be found at the EPA’s *Bulletins Live!* Web site: [www.epa.gov/espp/bulletins.htm](http://www.epa.gov/espp/bulletins.htm)

The EPA will evaluate species concerns within the context of pesticide registration, reregistration and registration review so that when a registration or reregistration decision is made, it fully addresses issues relative to listed species protection. If a risk assessment determines that use limitations are necessary to ensure that legal use of a pesticide will not harm listed species or their critical habitat, the EPA either may change the terms of the pesticide registration or establish geographically specific pesticide use limitations. When geographically specific use limitations are necessary, they will be reflected in Endangered Species Protection Bulletins.

Bulletins identify the species of concern and the name of the pesticide’s active ingredient that may affect the listed species. They also provide a description of the protection measures necessary to protect the species and contain a county-level map showing the geographic area(s) associated with

the protection measures, depending on the susceptibility of the species to other factors, such as vandalism. **Bulletins will be effective and enforceable as part of the product label.** The bulletins are dated within six months of pesticide use.

If your pesticide label directs you to the above Web site, you are required to follow the pesticide use limitations found in the bulletin for your county, the pesticide’s active ingredient and the application month.

The EPA’s bulletins contain the following information:

- Map of the county to which they apply
- Description of the species being protected
- Pesticide(s) of concern
- Pesticide use limitations
- Month for which the bulletin is valid
- The term “county” refers to counties, parishes and municipalities found within the U.S. and its territories.

Important point to remember:

- Bulletins may be accessed up to six months prior to pesticide application. Be sure you follow the correct bulletin for the month of your pesticide application.
- When referenced on a pesticide label, bulletins are enforceable use limitations under the Federal

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# Coordinator's Comments

As I write, we are working out the final touches on our training game plan for 2007-08. As you can see from our offerings in this newsletter, it will be a very busy season. Nonetheless, we are looking forward to it.

One thing we will not be looking forward to is the retirement of Gerry Thompson, enforcement coordinator with the North Dakota Department of Agriculture (NDDA). I keep forgetting how long he has been with the department, but as I recall, he started out as an inspector in the late 1980s. He has been a fixture around the state and, frankly, not seeing him on the training circuit delivering the department's presentations will be a bit disconcerting.

The first time I met Gerry was when I interviewed for this job in the fall of

1997. I recall that he asked how I felt about regulations and regulators and whether or not I would feel comfortable working around them, especially since I had mostly an industry and academic background. I do not remember my exact answer, but I know I wasn't prepared for it and of all the questions I was asked that day. I thought my response was lame at best and probably even incoherent and rambling. Thankfully, Gerry did not and has not held that response against me. Instead, I have been blessed to have him be a mentor of mine, and I think many of the better parts of this program have been a direct result of his excellent counsel through the years.

Further, in conversations with industry representatives across the state, I have been impressed, though

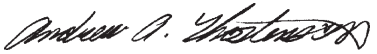
not surprised, that so many have expressed high praise for Gerry. On the face of it, this would seem odd since Gerry's role with the department has been enforcement (the heavy hand of government). But, for the most part, folks view his work as essential. He and his crew at the NDDA keep a check on pesticide use and in so doing are one of the primary means of assuring the general public that pesticides are being used in a manner that will not result in unacceptable risks to them or the environment. I've also heard from people who have had dealings with him involving enforcement actions or incidents. Like it or not (mostly not), they often remark that he acted fairly and professionally with them.

Finally, the flip side of Gerry not being with the NDDA means that we in the NDSU Pesticide Program can tap him for special projects and have him help us organize and manage our training events. This past year, Gerry's wife, Karen, was on the circuit with us, and this season we will have the both of them helping out. Otherwise, I know when he is not out and about with us, he is looking forward to doing some traveling and enjoying his son's family, which recently moved back to Bismarck from Utah.

Thanks for your fine work through the years, Gerry. And you have our best wishes on your next endeavors.

For those of you who will be participating in trainings this season, we will see you soon. For the rest, we will catch you in future issues of the *Pesticide Quarterly*.

All the best,

  
Andrew A. Thostenson,  
Pesticide Program Specialist

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## EPA Launches Endangered Species Bulletin Web Site

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Insecticide, Fungicide and Rodenticide Act.

- The pesticide use limitations found in Bulletins Live! are part of the EPA's federal program to protect listed species. Your state may have pesticide use limitations beyond those found in the bulletins. Bulletins are not intended to replace or override any restrictions that your state may impose. You need to be aware of and follow pesticide use limitations in your area by both the state and federal EPA requirements.

*(Editor's note: At the time of this writing, no bulletins are in North Dakota that describe specific use limitations for a particular pesticide. However, due to the nature and immediacy of the World Wide Web, this can change in a moment's notice. Therefore, the best way to manage this is to review your label prior to the expected use season and look for endangered species restrictions. If the label refers you to a bulletin, you must go to the above site and verify if bulletins exist for your particular site of application.)*

# Toronto, Canada's, Pesticide Bylaw and Natural Lawn and Garden Care

*Editors note: Toronto no longer controls dandelions with standard herbicide products. In fact, as of Sept. 1, 2007, if you use these products commercially or as a homeowner, you could be subjected to a fine up to \$5,000. This is not just a single city in Canada; 133 other municipalities have similar bans. While these sorts of laws have not become widespread in the U.S., ample evidence suggests many cities are examining this sort of idea and are implementing restrictions that ultimately are aimed at achieving severe restrictions on the use of commonly used pesticides. Below is an extract from the Toronto Public Health Web site ([www.toronto.ca/health/pesticides](http://www.toronto.ca/health/pesticides)) that describes the law.*

On April 1, 2004, the city of Toronto passed a bylaw banning the use of pesticides on all public and private property except in certain situations. The law applies to everyone, including homeowners, renters, lawn care companies, golf courses and property managers.

To allow people time to get familiar with the bylaw and alternatives to pesticides, the city phased in full enforcement of the bylaw. Starting Sept. 1, 2007, anyone breaking the bylaw is subject to fines of up to \$5,000.

## **Commonly Asked Questions about the Bylaw:**

### **Does the bylaw restrict weed killers?**

Yes. Weed killers (also called "herbicides") are a type of pesticide, so are covered under the bylaw. Pesticides include products that kill weeds, insects and plant diseases.

### **Can I still use fertilizers?**

Yes, but not if the fertilizer contains weed killer. "Weed and feed" products are not permitted. Read the label on the product and avoid products that contain ingredients like 2, 4-D, mecoprop or dicamba.

### **Why is the city involved in the way I handle my own lawn or garden?**

Pesticides can be dangerous, and not just to the people who use them. Scientists have identified links between exposure to pesticides and serious health problems, including harm to reproductive and nervous systems. Children are particularly sensitive to the effects of pesticides, as are some adults.

### **How does my pesticide use harm others?**

Any pesticide use may put your health or others at risk. Pesticides from your property can drift in the air and may wash into rivers, streams and sewers, eventually finding their way into Lake Ontario. That's the source of our drinking water. For the benefit of all residents, we need to reduce pesticides.

### **How am I supposed to know which products I can use and which I should avoid?**

The bylaw permits the use of pesticides that contain certain lower-risk ingredients. The easiest way is to read the label to find out what the product contains. The ingredients are listed on the label in small print next to the word "Guarantee."

Choose pest control products only if they contain one of the following ingredients:

- A soap
- A mineral oil, also called dormant or horticultural oil
- Silicon dioxide, also called diatomaceous earth
- Biological pesticides, including Bt (*Bacillus thuringiensis*) and nematodes
- Borax, also called boric acid or boracic acid
- Ferric phosphate
- Acetic acid
- Pyrethrum or pyrethrins
- Fatty acids
- Sulphur
- Corn gluten meal

Avoid pest control products that contain the following ingredients:

- 2,4-D
- mecoprop
- dicamba
- glyphosate
- carbaryl
- diazinon

*(Note: This is not a complete list of ingredients to avoid.)*

### **How can I learn more about keeping my garden looking good without pesticides?**

The first thing you need to know is that it can be done. You don't need pesticides to make your garden look good – healthy soil and plants will resist most weed and insect problems. Our Go Natural section contains all the information you will ever need to keep your lawn and garden healthy and pesticide-free.

*([www.toronto.ca/health/pesticides/go\\_natural\\_tips.htm](http://www.toronto.ca/health/pesticides/go_natural_tips.htm))*

# 2007-08 Commercial Pesticide Certification Calendar

Here are schedules you can use for planning your training needs during the next several months. These recertification trainings are structured to give currently certified applicators/dealers the information necessary to maintain or renew their certificates in the appropriate categories.

Preregistration is required for all trainings because of material and space limitations. If you do not preregister, you have no guarantee you will get seated at the training.

A *Training Preregistration* form is published in this newsletter. Electronic forms for downloading and printing also are available at <http://ndsupesticide.org>.

Home-study course recertification is available for those categories that are not on the training calendar or for the following minor categories: greenhouse, home industrial and institutional, metam-sodium, public health, vertebrate and wood preservation. Request your materials for these courses with the *Nontraining Study Materials* request also printed in this newsletter on page 11.

## ■ AgPest, Right-of-Way, Seed Treatment, Research and Demonstration Recertification

Date	Time	Location
Nov. 28, 2007 Northern Ag Expo	Registration 7:30 a.m.; Training 8 a.m. – 5 p.m.	Fargo, Fargodome, 1800 University Drive N.
Dec. 5, 2007	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Dickinson, Days Inn/Grand Dakota Lodge, 532 15th St. W.
Jan. 9, 2008 Jamestown Ag Show	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Jamestown, Jamestown Civic Arena, 212 3rd Ave. S.W.
Jan. 24, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Williston, Research Extension Center, 14120 Highway 2
Feb. 6, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Mandan, Seven Seas Hotel, 2611 Old Red Trail
Feb. 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Minot, Holiday Inn, 2200 Burdick Expressway E.
Feb. 20, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Langdon, Research Extension Center, 9280 107th Ave. N.E.
Feb. 20, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Linton, Emmons County Extension, 100 4th St. N.W.
Feb. 20, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Mohall, Renville County Courthouse, 205 Main St. E.
Feb. 28- March 1, 2008 NDAAA Convention, Aerial App Only	TBA; must attend both days	Morton, Minn.
March 5, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Devils Lake, Knights of Columbus, 522 4th St.
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Crosby, Divide County Extension, 300 2nd Ave. N.
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	LaMoure, LaMoure County Courthouse, 202 4th Ave. N.W.
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Fessenden, Wells County Extension, 600 Railway St. N.
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Wahpeton, Richland County Courthouse, 418 2nd Ave. N.
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Watford City, McKenzie County Courthouse, 201 5th St. N.W.
March 25, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Fargo, Ramada Plaza Suites, 1636 42nd St. S.W.

## ■ Fumigation Recertification

Date	Time	Location
Dec. 13, 2007	Registration 9:30 a.m.; Training 10 a.m. – 2:30 p.m.	Bismarck, Burleigh County Extension, 3715 Bismarck Expressway E.
Dec. 13, 2007	Registration 9:30 a.m.; Training 10 a.m. – 2:30 p.m.	Grand Forks, Grand Forks County Extension, 151 4th St. S., S302
Dec. 13, 2007	Registration 9:30 a.m.; Training 10 a.m. – 2:30 p.m.	Mohall, Renville County Extension, 205 Main St. E.
Jan. 16, 2008	Registration 9:30 a.m.; Training 10 a.m. – 2:30 p.m.	Fessenden, Wells County Extension, 600 Railway St. N.
Jan. 16, 2008	Registration 9:30 a.m.; Training 10 a.m. – 2:30 p.m.	Wahpeton, Richland County Courthouse, 418 2nd Ave. N.
Jan. 16, 2008	Registration 9:30 a.m.; Training 10 a.m. – 2:30 p.m.	Williston, Williams County Courthouse, 205 Broadway E.
March 3, 2008	Registration 9:30 a.m.; Training 10 a.m. – 2:30 p.m.	Fargo, NDSU Memorial Union Ballroom

## ■ Greenhouse, and Ornamental and Turf Recertification

Date	Time	Location
Oct. 31, 2007	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Bismarck, Burleigh County Extension, 3715 Bismarck Expressway E.
Oct. 31, 2007	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Grand Forks, Grand Forks County Extension, 151 4th St. S., S302
Oct. 31, 2007	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Minot, Research Extension Center, 5400 Highway 83 S.
Dec. 18, 2007	Registration 9 a.m.; Training 9:30 a.m. – 5 p.m.	Devils Lake, Ramsey County Courthouse, 524 4th Ave. N.E.
Dec. 18, 2007	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Dickinson, Dickinson State University, 220 Kleinfelter Hall
Dec. 18, 2007	Registration 9 a.m.; Training 9:30 a.m. – 5 p.m.	Williston, Williams County Courthouse, 205 Broadway E.
Jan. 30, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Fargo, Ramada Plaza Suites, 1636 42nd St. S.W.
Feb. 26, 2008 NCTGA Convention	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Fargo, Holiday Inn, 3803 13th Ave. S.

## ■ Home, Industrial and Institutional Recertification

Date	Time	Location
Nov. 1, 2007	Registration 9 a.m.; Training 9:30 a.m. – 4 p.m.	Fargo, NDSU Loftsgard Hall 260

## ■ Public Health Recertification

Date	Time	Location
April 22, 2008 Mosquito Control Assn	Registration 7:30 a.m.; Training 8 a.m. – 5 p.m.	Bismarck, Radisson Hotel, 605 Broadway Ave. E.
May 14, 2008	Registration 9 a.m.; Training 9:30 a.m. – 4 p.m.	Fargo, Cass County Courthouse Annex, 1010 2nd Ave. S., lower level
May 14, 2008	Registration 9 a.m.; Training 9:30 a.m. – 4 p.m.	Grand Forks County Extension, 151 4th St. S., Suite 302

## ■ Right-of-Way ONLY Recertification

May 20, 2008	NDWCA Annual Sprayer School	To be announced in a future issue of the <i>Pesticide Quarterly</i> newsletter.
May 22, 2008	NDWCA Annual Sprayer School	To be announced in a future issue of the <i>Pesticide Quarterly</i> newsletter.

## Training Opportunities for New Applicators/Dealers

Astute readers of the *Pesticide Quarterly* will note that in years past, we have listed trainings as either initial or for recertification. Further, they often were category specific. This year, we are revamping our outreach for people who are new to pesticide certification. These folks ordinarily would attend an initial training, but now we're calling it: **"Introductory Basic Core Training"**

The training is designed for commercial or public applicators and dealers who are new to pesticide certification in North Dakota. It will cover basic pesticide safety and handling practices, as well as relevant laws and regulations as they pertain to the distribution and use of pesticides. This training is not category specific. It will emphasize practices and procedures that should be useful to all applicators or dealers, whether they are seeking certification in the Agricultural Pest Control category, Wood Preservation category or any of the 10 other use categories found in North Dakota. The training also will describe the certification process and how to prepare and take exams to obtain a pesticide certificate.

People who wish to participate should fill out the training preregistration form found in this newsletter. If you are unsure of your category needs, simply leave that portion of the form blank and pay only the base \$55 fee. If you have questions, call (701) 231-7180 or (701) 231-6388.

Date	Time	Location
Dec. 11, 2007	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Mandan, Seven Seas Hotel, 2611 Old Red Trail
March 4, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Fargo, NDSU Memorial Union Ballroom
June 4, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Minot, Holiday Inn, 2200 Burdick Expressway E.

# Texas Department of Agriculture Levies Fines in Aluminum Phosphide Incident

*Editor's note: The following news release from the Texas Department of Agriculture recounts an incident that occurred in 2006. The fines finally were paid in 2007. This is precisely the sort of thing we want to avoid in North Dakota. Unfortunately, in 2006 alone, the North Dakota Department of Agriculture recorded 10 illegal fumigant sales, any one of which could end up just as badly.*

The Texas Department of Agriculture announced recently that Brad Raphel and Walter Cronin were found in violation of the state's pesticides laws and fines have been levied against Raphel and Cronin following an incident in July 2006 at a Brazos County equestrian facility where 27 horses died.

"The Texas Department of Agriculture considers any violation of the state's pesticide laws a serious matter," Commissioner Staples said. "We will continue to actively investigate any complaint and take necessary enforcement actions whenever sufficient evidence exists to determine if a violation occurred and who is responsible."

TDA provided a copy of the investigation report to Brazos County law enforcement officials in October 2006 and will continue to make case materials available to local authorities.

Raphel was charged with five violations of the state law.

These were:

- Using a restricted-use pesticide (PhosFume) without a license or under the direct supervision of a licensed applicator. In addition, Raphel used PhosFume in a manner inconsistent with its label by applying it when a licensed supervising applicator was not present or on the premises
- Using PhosFume in a manner inconsistent with its label by failing to store it under lock and key, by storing it in a building where horses were stabled and by failing to post the area as a pesticide storage area. Raphel also used Weevil-Cide, a restricted-use pesticide, in a manner inconsistent with its label by failing to follow correct storage and posting procedures, including storing the product in a building where humans lived
- Using PhosFume in a manner inconsistent with its label by failing to allow a minimum fumigation period of 72 hours and by failing to aerate the fumigated feed for 48 hours prior to feeding the horses
- Using PhosFume in a manner inconsistent with its label by failing to obtain and read the product application manual
- Distributing a pesticide to others without a valid dealer's license issued by TDA

Each violation carried a fine of \$1,000; however, the Texas Agriculture Code limits the total fine to \$4,000 for all violations related to a single incident.

In addition, Raphel received a warning for failing to notify employees before fumigating the horse feed.

Cronin received a \$1,000 fine for failing to properly supervise the use of a restricted-use pesticide. He also received a warning for failing to maintain records for the first time the pesticide product was applied.

TDA issued a warning to Producers Co-op in Bryan for failing to record the correct product name of a pesticide sold, for failing to record Raphel as an unlicensed applicator receiving the product and for distributing a pesticide without a product application manual.

**Need help with  
pesticide certification or  
general pesticide use issues?**

**Contact:**

NDSU Pesticide Training and  
Certification Program  
Box 5051, Fargo, ND 58105-5051

Tel: (701) 231-7180

Fax: (701) 231-5907

E-mail: [pesticid@ndsuxt.nodak.edu](mailto:pesticid@ndsuxt.nodak.edu)

Internet: [www.ndsupesticide.org](http://www.ndsupesticide.org)

# Certified Crop Adviser Continuing Education Units Available at Commercial Pesticide Applicator Trainings

The NDSU Extension Service Pesticide Program is offering certified crop advisers the opportunity to obtain their continuing education units (CEUs) at selected commercial agricultural pest recertification training sessions. Six credit hours are available at each training listed below (1.5 in Soil and Water Management and 4.5 in Pest Management.)

Please note that you must attend 100 percent of the training to receive your CEU credits. No exceptions allowed!

Fees for attending a session are as follows:

- \$ 5 per credit for crop advisers who also are attending for commercial pesticide recertification
- \$10 per credit for crop advisers who are attending for CEUs only

Please preregister 10 days before a training to ensure adequate space at each location. Call the NDSU Extension Pesticide Program with any questions at (701) 231-7180 or (701) 231-6388.

## Certified Crop Adviser – CEU Preregistration 2007-08

Include fee

(Please print)

Name \_\_\_\_\_

Phone (            ) \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ ZIP \_\_\_\_\_

I will attend the following workshop:

Date \_\_\_\_/\_\_\_\_/\_\_\_\_ City \_\_\_\_\_

Fee \_\_\_\_\_

Attending for CEUs only?

6 credits x 10      Total \$ \_\_\_\_\_

Attending for pesticide certification also?

6 credits x 5      Total \$ \_\_\_\_\_

Make checks payable to: NDSU Extension Pesticide Program  
(If paying by personal check, the state of North Dakota  
requires your birth date on the check)

Send payment to: NDSU Extension Pesticide Program  
P.O. Box 5051  
Fargo, ND 58105-5051

Date	Time	Location
Nov. 28, 2007 Northern Ag Expo	Registration 7:30 a.m.; Training 8 a.m. – 5 p.m.	Fargo, Fargodome, 1800 University Drive N.
Dec. 5, 2007	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Dickinson, Days Inn/Grand Dakota Lodge, 532 15th St. W.
Jan. 9, 2008 Jamestown Ag Show	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Jamestown, Jamestown Civic Arena, 212 3rd Ave. S.W.
Jan. 24, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Williston, Research Extension Center, 14120 Highway 2
Feb. 6, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Mandan, Seven Seas Hotel, 2611 Old Red Trail
Feb. 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Minot, Holiday Inn, 2200 Burdick Expressway E.
Feb. 20, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Langdon, Research Extension Center, 9280 107th Ave. N.E.
Feb. 20, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Linton, Emmons County Extension, 100 4th St. N.W.
Feb. 20, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Mohall, Renville County Courthouse, 205 Main St. E.
March 5, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Devils Lake, Knights of Columbus, 522 4th St.
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Crosby, Divide County Extension, 300 2nd Ave. N
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	LaMoure, LaMoure County Courthouse, 202 4th Ave. N.W.
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Fessenden, Wells County Extension, 600 Railway St. N.
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Wahpeton, Richland County Courthouse, 418 2nd Ave. N.
March 12, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Watford City, McKenzie County Courthouse, 201 5th St. N.W.
March 25, 2008	Registration 8 a.m.; Training 8:30 a.m. – 4 p.m.	Fargo, Ramada Plaza Suites, 1636 42nd St. S.W.

# Liability of Pesticide Exposure

*Editor's note: The following article is a reprint of a paper delivered by Marc G. Kurzman at the EPA's North American Pesticide Applicator Certification and Safety Education Workshop in Portland, Maine, in August 2007. It has some excellent advice, especially for employers of pesticide applicators, regarding the need to adopt "best practices" to avoid lawsuits.*

Wrongful death law is an area of law that seeks to provide financial compensation to the heirs of a person whose death was caused by the negligent, willful or wrongful act, neglect, omission or default of another. Each state has drafted its own set of civil "wrongful death statutes," and some form of wrongful death claim action exists in all state jurisdictions today. While they all follow similar principles, each state jurisdiction is unique, so laws will vary from state to state. There are no federal statutes for wrongful death.

Successful wrongful death (and fear of/developing chronic diseases) verdicts can be obtained when there are occupational (and nonoccupational) exposures to hazardous conditions or substances.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) governs pesticide manufacturing, sale, use and labeling in the United States. FIFRA is regulated by the Environmental Protection Agency (EPA). In order to register a pesticide, the applicant must submit data to the EPA to establish that the pesticide will not cause unreasonable adverse effects on the environment. The unreasonable adverse effects standard, which appears throughout

FIFRA, includes "man or the environment." This definition incorporates a risk-benefit standard since it recognizes that pesticides are toxic and, therefore, present a risk to man and the environment, but are also designed to render a benefit - control of a pest. EPA registration of a pesticide pursuant to FIFRA does not mean that the pesticide is "safe," even for its intended use. It merely means that, in EPA's opinion, the benefits of the pesticide outweigh its costs.

Tort pre-emption allows defendants some immunity to civil liability because they have done what is required by statute. The leading case supporting tort pre-emption is *Cipolloance v. Liggett Group Inc.*, 505 U.S. (1992). *Cipolloance* held that the pre-emptive clause in the Public Health Cigarette Smoking Act pre-empted civil liability. The leading case against tort pre-emption is *Medtronic Inc. v. Lohr*, 518 U.S. (1996). *Medtronic* held that the pre-emptive clause in the Medical Device Amendments of 1976 did not pre-empt the plaintiff's tort claims. So far, courts have followed *Cipolloance* more than *Medtronic*; however, in 2008, the U.S. Supreme Court will be re-examining this issue in *Riegel v. Medtronic*.

FIFRA contains an express pre-emption clause regarding labeling requirements. Therefore, the majority of cases regarding pesticides, which have been FIFRA and EPA approved, hold that this approval pre-empts any state common law cause of action arising out of any alleged product liability; however, there is enough precedent to bolster a court's decision either for or against pre-emption.

As the EPA noted in an amicus brief filed in *Etcheverry v. Tri-Ag Services Inc.*, 22 Cal. 4th 316 (Ca. 2000), "Given that FIFRA establishes no private damages remedy for those injured by pesticides, it would be astonishing that, without any discussion, Congress could have intended to deprive injured persons of all means of relief."

In *Bates v. Dow Agrosiences LLC*, 81 U.S (2005), the U.S. Supreme Court held that FIFRA did not pre-empt the farmer's claims alleging defective design, defective manufacture, negligent testing and breach of express warranty. In *Wuebker v. Wilbur-Ellis Co.* (8th Cir. 2005), relying on *Bates*, the court held that EPA regulation did not impliedly pre-empt common law claims.

Plaintiffs can recover "compensatory damages," such as the loss of support, services, lost prospect of inheritance, and medical and funeral expenses. Damages also typically include interest from the date of the decedent's death. Punitive damages may also be awarded in cases of serious or malicious wrong-doing to punish the wrong-doer and/or deter others from behaving similarly.

The law is constantly changing in terms of how it is applied. However, as more health professionals are becoming aware of the potential link between exposure to toxic substances and disease and, accordingly, more plaintiffs' lawyers are looking for more "experts" to bolster lawsuits, it is likely that lawyers seeking money will push against case law and utilize publicity to generate pressure upon manufactures and



applicators to settle cases rather than expending millions of dollars defending and hundreds of millions of dollars paying verdicts which may, or may not, be reversed on appeal.

The best practice to avoid civil liability is to use “best (applicator) practices” when dealing with potentially hazardous substances – without regard to whether or not a particular risk is recognized at a particular point in time by a majority of scientific evidence. While no one can be expected to “know” all of the literature and research within a field, it is a safe bet that the plaintiff’s lawyer will find it – and an expert to tell the fact finder that a particular defendant knew, or could have known, about the risk. Documenting the steps being taken gathering information and establishing safety routines is essential to later establishing why a particular defendant, be it an individual or a multinational corporation, should not be held liable

Marc G. Kurzman is a litigator with 35+ years of experience trying cases in state and federal courts. A graduate of New York University Law School, he wins more than 85 percent of his trials, with an even higher success rate negotiating satisfactory outcomes. He is admitted to practice in the states of Minnesota, Wisconsin, Florida and New York. He is admitted to practice in a number of U.S. District Courts, U.S. Court of Appeals and the U.S. Supreme Court. His clients have included lawyers, physicians, teachers, legislators, business owners and other professionals. He has been an assistant professor at the University of Minnesota, a lecturer at continuing education programs in Minnesota and numerous other states, a patent attorney and a pharmacist. He served as lead counsel for formaldehyde litigation for the Association of Trial Lawyers of America (representing thousands of plaintiffs nationwide). He is a consultant to managed-care providers and under contract to study civil litigation issues regarding pesticide applications and civil liability as they relate to both health-care professionals and applicators.

# Commercial Pesticide Recertification Pre-registration Form

## Training Pre-registration

<b>PERSONAL INFORMATION</b> (please print)
Name _____
Address _____
Phone _____
Date of birth _____
E-mail _____

<b>EMPLOYER/BUSINESS</b>
Name _____
Address _____
Phone _____
Fax _____
E-mail _____

**Correspondence from the Pesticide Office should go to which of the above addresses?**     personal     employer

N.D. County of Residence \_\_\_\_\_    N.D. Commercial Pesticide ID \_\_\_\_\_

Do you work for a government agency?     Yes     No

Is this certification for research and demonstration purposes?     Yes     No

Check all that apply on each line:    **Core Status**     Ground     Aerial  
**Certification Status**     Applicator     Dealer     Consultant

<b>Training/Pre-Registration</b>		
<u>Study materials are provided at training.</u>		
Do not request material for training(s) indicated below.		
▼ Check each category you are training in:	▼ Location of training	▼ Date
<input type="checkbox"/> Ag Pest		
<input type="checkbox"/> Right-of-Way		
<input type="checkbox"/> Seed Treatment		
<input type="checkbox"/> Fumigation		
<input type="checkbox"/> Greenhouse		
<input type="checkbox"/> Ornamental and Turf		
<input type="checkbox"/> Home, Industrial and Institutional		
<input type="checkbox"/> Public Health		
Total training/pre-registration categories _____ X \$10 = \$ _____		
Base fee (one-time charge per training season)		\$55
<b>Total</b>		<b>\$ _____</b>

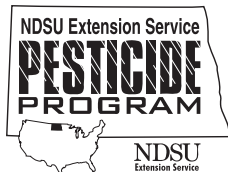
**Method of Payment  
(payment must be included)**

**Credit Card**  
 Visa     MasterCard     Discover  
 Credit Card # \_\_\_\_\_  
 Expiration (mo/yr) \_\_\_\_/\_\_\_\_  
 Cardholder name (print) \_\_\_\_\_

**Check/Money Order #** \_\_\_\_\_  
 Payable to NDSU Extension Pesticide Program  
*If paying by personal check, the state of North Dakota requires your birthdate on the check.*

**Send payment to:**  
 NDSU Extension Pesticide Program  
 Box 5051 NDSU  
 Fargo, ND 58105

**Must be postmarked 10 days prior to training.**



**For questions, contact the  
 NDSU Extension Pesticide Program Office  
 phone (701) 231-7180 or (701) 231-6388; fax (701) 231-5907**

# Commercial Pesticide Study Material Request Form

## Non-training Study Materials

<b>PERSONAL INFORMATION</b> (please print)
Name _____
Address _____
Phone _____
Date of birth _____
E-mail _____

<b>EMPLOYER/BUSINESS</b>
Name _____
Address _____
Phone _____
Fax _____
E-mail _____

**Correspondence from the Pesticide Office should go to which of the above addresses?**     personal     employer

N.D. County of Residence \_\_\_\_\_

N.D. Commercial Pesticide ID \_\_\_\_\_

Do you work for a government agency?     Yes     No

Is this certification for research and demonstration purposes?     Yes     No

Check all that apply on each line:    **Core Status**     Ground     Aerial  
**Certification Status**     Applicator     Dealer     Consultant

<b>Study Material</b>	
▼ Check each category for study material needed:	
<input type="checkbox"/> Ag Pest	
<input type="checkbox"/> Fumigation	
<input type="checkbox"/> Greenhouse	
<input type="checkbox"/> Home, Industrial and Institutional	
<input type="checkbox"/> Ornamental and Turf	
<input type="checkbox"/> Public Health	
<input type="checkbox"/> Right-of-Way	
<input type="checkbox"/> Seed Treatment	
<input type="checkbox"/> Vertebrate	
<input type="checkbox"/> Wood Preservatives	
Total study material categories _____ X \$10 = \$_____	
Base fee (one-time charge per training season)	\$55
Shipping and handling	+ \$5
<b>Total</b>	<b>\$_____</b>

**Method of Payment  
(payment must be included)**

**Credit Card**

Visa     MasterCard     Discover

Credit card # \_\_\_\_\_

Expiration (mo/yr) \_\_\_\_/\_\_\_\_

Cardholder name  
(print) \_\_\_\_\_

**Check/Money Order #** \_\_\_\_\_

Payable to NDSU Extension Pesticide Program

*If paying by personal check, the state of North Dakota requires your birthdate on the check.*

**Send payment to:**  
 NDSU Extension Pesticide Program  
 Box 5051 NDSU  
 Fargo, ND 58105



**For questions, contact the  
 NDSU Extension Pesticide Program Office  
 phone (701) 231-7180 or (701) 231-6388; fax (701) 231-5907**

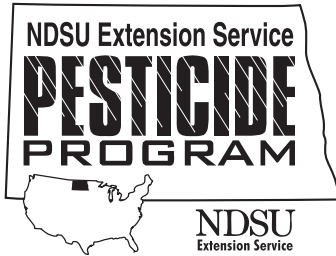
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Extension Service  
Box 5437  
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