



North Dakota Senate Bill 2248 Passes Legislature By Wide Margins, Awaits Governor's Signature

Just days before the Legislature left town, both chambers passed, by nearly unanimous margins, changes to the basic pesticide use law (North Dakota Century Code Chapter 4.35). At the time of this writing, the governor's approval is expected. These changes would have the effect of law on Aug. 1, 2009.

The original intent of the bill was to:

- Generally make the language of the law easier to understand and to clean up confusing and even conflicting wording. These changes were not considered substantive changes.
- Allow North Dakota dealers to be able to sell restricted-use pesticides (RUP) to certified applicators from other states.
- *Require RUP applications to be made only by certified individuals. This would effectively eliminate the ability for private applicators to "directly supervise" the application of RUP by noncertified individuals.*
- Allow private applicators to receive their certifications in counties other than their county of residence.
- Make applying pesticides to the land of another without the permission of the landowner, renter or lessee illegal. (The exception would be for government entities involved in noxious weed control or public health pest control.)
- Enable the North Dakota Department of Agriculture (NDDA) to be able to inspect bulk pesticide repackaging records.
- Keep pesticide use records collected by the NDDA confidential.

The exception being the release of the name and EPA registration number of the product to a medical provider to treat a patient properly.

The most controversial of these proposals (highlighted and bolded above) was to restrict the application of RUP only to certified individuals. On Jan. 30, then-Agriculture Commissioner Roger Johnson testified before the Senate Agriculture Committee supporting this change. In a Jan. 30 news release, he explained his reasoning for this request:

The North Dakota Pesticide Control Board has asked the Legislature to ensure that only properly trained people can apply especially risky pesticides.

Testifying Friday before the Senate Agriculture Committee in support of Senate Bill 2248, Agriculture Commissioner Roger Johnson, who chairs the Pesticide Control Board, said these chemicals are classified as "restricted-use pesticides" (RUP) because they pose special risk to human health or the environment. The bill, introduced by Sen. Jerry Klein of Fessenden, also includes a number of provisions aimed at clarifying

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Coordinator's Comments

The first five months of 2009 have been quite a ride!

First, the Legislature kicked off hearings on changes to the basic pesticide law in January.

Then, almost simultaneously, the state was hit repeatedly with blizzards and record snows. This made travel and training almost impossible on some days. Indeed, both Mike Liane, NDSU training specialist, and I were involved in a pair of serious automobile accidents due to blizzard conditions. (We were shaken up but not seriously injured.) During February and March, we canceled five trainings due to winter weather and floods.

If that wasn't enough, the NDSU campus was paralyzed and then shut down due to flooding in March and April (traditionally the busiest time of year for folks involved in pesticide training and certification).

While all this was going on, Roger Johnson, longtime North Dakota commissioner of agriculture, resigned and a third-generation family farmer, Doug Goehring, was appointed commissioner on April 6 by Gov. John Hoeven.

By the end of April, the Legislature finished its work on the overhaul of the pesticide law and we still were getting ready to deliver our third makeup training post-blizzard and post-flood.

We are just getting caught up on the backlog of certificates and paperwork that the closures and extra trainings caused us. On the plus side of this chaos, you folks in the pesticide community took all of this in stride and with the patience of saints. For me and my staff, I want to thank you for your kind words of encouragement and understanding throughout this training season.

Let us hope for fine summer weather and a much calmer 2009-10 training season.

Warmest regards,



Andrew A. Thostenson
Pesticide Program Specialist

Senate Bill 2248

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and simplifying the state's pesticide law.

"RUPs include such things as aluminum phosphide and paraquat that are highly toxic to people, pesticides such as picloram and atrazine that have high potential to leach into groundwater and substances like insecticides that are highly toxic to fish and other aquatic species," Johnson said.

Johnson said the current law contains a loophole, allowing a person to make a private application of an RUP without being certified.

"The law requires that only certified dealers can sell RUPs ... and that only certified persons can buy RUPs," he said. "Both of these provisions are meant to control the distribution of these products and keep them out of the hands of untrained users. The greatest risk, however, is in the use of these pesticides. If we do not keep them in the hands of certified applicators, we defeat the entire purpose of certification."

Johnson said the new language makes it clear that only certified applicators may purchase or use an RUP, regardless of whether it is for private or commercial use. He also said the change in the law will not affect most producers.

"RUPs represent less than 5 percent of the registered pesticides in North Dakota, and they are not as commonly used as some may believe," he said.

"Of the top 30 pesticides used in North Dakota on a per-acre basis, only one is a RUP."

He also pointed out that obtaining private certification is not difficult, requiring only four hours of training every three years and a \$25 fee.

In addition to Johnson, the Pesticide Control Board includes Duane Hauck, director of North Dakota State University Extension Service, and Ken Grafton, director of the North Dakota Agricultural Experiment Station.

The Senate went on to concur with all of the proposed changes, including the tighter control on the application of RUP.

When the bill came up in the House Agriculture Committee, all of the proposals with the exception of the new restriction on RUP application were adopted. The House eventually voted in favor of SB 2248 but amended the bill to eliminate this restriction on RUP applications.

Since the Senate and House versions of the bill were in variance, a conference committee was appointed to settle the differences. The conference committee decided to accept the House amendments. Thus, both chambers adopted SB 2248 without the proposed limitations on RUP applications.

For more information on the background and the actual wording of the legislation, you can go to the following Web pages or contact the NDDA at (800) 242-7535:

- Roger Johnson testimony on SB 2248 on Jan. 30, 2009
<http://agdepartment.com/Testimony/2009LegTestimony/SB2248-Chapter4-35-1-30-09.pdf>
- Legislative record on SB 2248
www.legis.nd.gov/assembly/61-2009/bill-actions/ba2248.html
- Final version approved by the Legislature and sent to the governor
www.legis.nd.gov/assembly/61-2009/bill-text/JBNG0400.pdf

As indicated above, these changes are expected to have the force of law on Aug. 1, 2009. Just as soon as they are published, they will be posted on the NDSU Pesticide Program Web site at www.ag.ndsu.nodak.edu/aginfo/pesticid/pesticid.htm and at the North Dakota Legislature Web site at www.legis.nd.gov.

Need help with pesticide certification or general pesticide use issues?

Contact:

NDSU Pesticide Training and Certification Program
NDSU Dept. 7060
205 Walster Hall, P.O. Box 6050
Fargo, ND 58108-6050 USA

Phone: (701) 231-7180

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E-mail: pesticid@ndsuext.nodak.edu

Web: www.ndsupesticide.org

2009 Project Safe Send Dates and Location Set

Project Safe Send was started in 1992 to help farmers safely and legally get rid of unusable pesticides. Since then, more than 6,400 people have brought in excess of 2.3 million pounds of pesticides. That's a lot. But with the support of pesticide manufacturers, the North Dakota Department of Agriculture (NDDA) has funds to help get rid of more. We can accept any pesticides (herbicides, insecticides, rodenticides and fungicides) that are old, unusable or banned, such as DDT, arsenic, dieldrin, chlordane or mercury seed treatments.

A healthy environment is something we take for granted. But keeping our air and water clean and pure requires commitment and can be costly. For years, farmers and ranchers have done their part by safely storing unusable pesticides

such as DDT and mercury seed treatments.

Now they have a way to get rid of these old pesticides for good. It's called Project Safe Send.

It's safe, simple, nonregulatory and free.

Collections will be held at the following locations and dates. Please note that all locations unless otherwise indicated are at North Dakota Department of Transportation facilities. The times are 9 a.m. to 3 p.m. local time.

After the collections, hazardous pesticides are packed carefully and shipped out of state for incineration.

"Project Safe Send provides a valuable service to agriculture producers, agribusiness and the

public in disposing of outdated or unusable pesticides," says Agriculture Commissioner Doug Goehring.

Please check your storage areas for any unusable pesticides. If you find some, bring them to Project Safe Send. Preregistration is not required. If you need more information or want to arrange for large-quantity deliveries, call the NDDA toll-free at (800) 242-7535.

In the meantime, keep pesticides locked up safely. If you have deteriorating or leaking containers, overpack them in larger containers and add absorbent materials. Free heavy-duty plastic bags are available from the NDDA.

For more information, please contact your local NDSU county Extension agent or Judy Carlson at the NDDA at (800)242-7535 or jcarlson@nd.gov.

Tuesday, July 7	Casselton – 15482 37th St. S.E.; take I-94 Exit 331, go north on North Dakota Highway 18, take frontage road west about three-fourths mile.
Wednesday, July 8	Hillsboro – 590 6th St. N.W.; take I-29 exit 104 at Hillsboro, go east one-half block and north one-third mile on 6th St. N.W.
Thursday, July 9	Grand Forks – 1951 Washington St. N., from I-29, take Gateway exit, go east to U.S. Highway 81 (Washington Street), go north one mile.
Friday, July 10	Drayton – just east of I-29 interchange on North Dakota Highway 66, (north side of the road).
Monday, July 13	Devils Lake – 1905 Schwan Ave. N.W.; 2½ miles west of Devils Lake Industrial Park, south side of U.S. Highway 2.
Tuesday, July 14	Valley City – 1524 8th Ave. S.W., south of I-94 at Exit 292. Bottineau – one-half mile east of Bottineau on North Dakota Highway 5, 1½ miles north on Lake Metigoshe Road (east side of the road).
Wednesday, July 15	Edgeley – two miles north of junction of U.S. Highway 281 and North Dakota Highway 13, west side of Highway 281. Minot – from the intersection of U.S. Highways 83 and 2, go east about three miles; DOT is on the east side of Highway 2, just north of Gooseneck Implement (John Deere dealership).
Thursday, July 16	Wyndmere – from the junction of North Dakota Highways 13 and 18, go 2½ miles north on Highway 18 (west side of road). Williston – 605 Dakota Parkway W.; on U.S. Highways 2 and 85 bypass (across from the Kum & Go gas station).
Friday, July 17	Dickinson – 1700 3rd Ave. W., Suite 101; on east side of North Dakota Highway 22, one-half mile north of the junction of I-94 and Highway 22.
Monday, July 20	Beulah – 205 Highway 49 S.; take I-94 to exit 110, then go 30 miles north on North Dakota Highway 49 to the south side of Beulah. NDDOT is west of Highway 49 and just south of the railroad tracks.
Tuesday, July 21	Flasher – from North Dakota Highway 21 on the west edge of the city, turn north on Morton County Road 84, go one block north (DOT is on the east side of the road).
Wednesday, July 22	McClusky – west side of city at intersection of North Dakota Highway 200 and First Street.
Thursday, July 23	Napoleon – 59 Broadway; take I-94 Exit 208, proceed south one-quarter mile on North Dakota Highway 3 (east side of road).

Pesticide Applications and the Clean Water Act: Is a Permit Required?

Editor's note: The following news release recently was published in Wisconsin's Crop Manager News by Roger Flashinski, pesticide coordinator for the University of Wisconsin. He outlines the legal wrangling that has ensued from an April ruling from the 6th U.S. Circuit Court of Appeals.

Several recent news releases on this issue, and the resulting flurry of e-mails, are asking whether pesticide applicators will need a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA). From final rules and through court appeals and a reinterpretation of the findings, officials are saying: Yes, but not yet. Here's the scoop.

Since the enactment of the Clean Water Act (CWA) in 1972, EPA has not required a NPDES permit when applying pesticides registered under the FIFRA (Federal Insecticide, Fungicide and Rodenticide Act) directly to, over or near waters of the United States when legally applied to control pests at those sites. On Nov. 27, 2006, the EPA issued a final rule clarifying two specific circumstances in which a CWA permit is not required: 1) the application of pesticides directly to water to control pests and 2) the application of pesticides to control pests that are present over or near water, where a portion of the pesticides unavoidably will be deposited onto the water. The rule became effective on Jan. 26, 2007.

On Jan. 7, 2009, the 6th U.S. Circuit Court of Appeals determined that the EPA's final rule was not a reasonable interpretation of the CWA and, therefore, vacated the rule. Reversing the EPA's November 2006 Aquatics Pesticides rule, the 6th Circuit held that CWA permits are required for all biological pesticide applications and all chemical pesticide applications that leave a residue in water when such applications are made to, over or near waters of the U.S. Parties had until April 9, 2009, to seek a rehearing.

On April 9, 2009, the Department of Justice (DOJ) chose not to seek rehearing on an opinion issued by the 6th U.S. Circuit Court of Appeals. The DOJ instead filed a motion for stay (delay) of the court's mandate until April 9, 2011, to provide the EPA with time to develop, propose and issue a final NPDES permitting process. Time also is needed to provide outreach and education to pesticide applicators, which includes local government entities that spray to and over waters to control mosquitoes, farmers who apply pesticides to eradicate aquatic pests, foresters who aerially spray over waters to prevent outbreaks of timber pests and the U.S. Coast Guard, which sprays to kill insects that interfere with the maintenance of navigation devices.

Because neither the EPA nor the state departments of agriculture have the resources to process and issue individual permits for the thousands of applicators affected by this court's decision, the EPA proposes to issue general NPDES permits that will address a large number of similarly situated dischargers in lieu of issuing individual permits to each discharger. Without such permitting authority, significant disruptions to the regulated community likely will occur. The EPA has, therefore, requested the court to use its power to delay this action until April 9, 2011, to allow the EPA and authorized permitting authorities sufficient time to develop and issue Clean Water Act permits for pesticide applications.

In related activity, CropLife America (and numerous other agricultural organizations) did petition the court for a rehearing. They argued that the court's decision ignored the definition in the Clean Water Act of "point source," and they requested that the full 6th U.S. Circuit Court of Appeals review the three-judge panel's January decision vacating EPA's final rule for pesticides. Thus, the court must decide whether to rehear the case, issue the stay per the EPA's request, or let its decision stand as is. The only further option for appeal is to the Supreme Court.

At the time of this writing, or until the court rules, the EPA's existing Nov. 27, 2006, rule is still the law. But that can and probably will change, so stay tuned.

Canadians Can Purchase Certain Pesticides From U.S. Sources

Jim Gray, Pesticide Registration Coordinator, North Dakota Department of Agriculture

This year, North Dakota pesticide dealers may see some Canadian customers buying pesticides under the Canadian Grower Requested Own Use (GROU) program. Under the GROU, Canadian growers can buy certain U.S. pesticides and import them into Canada for their own use. At the present time, the following pesticide products are covered under the GROU:

Pesticides Allowed Under the Canadian GROU program.

Canadian Product	U.S. Product
Reglone Desiccant	Reglone Desiccant (EPA Reg. No. 100-1061)
Nufarm 2,4-D Amine 500	Nufarm Weedar 64 Broadleaf Herbicide (EPA Reg. No. 71368-1)
Sevin Brand XLR Plus	Sevin Brand XLR Plus (EPA Reg. No. 264-333)
Bravo Zn	Bravo Zn (EPA Reg. No. 50534-204-100)
GF-120 NF Naturalyte Fruit Fly Bait	GF-120 NF Naturalyte Fruit Fly Bait (EPA Reg. No. 62719-498)
Aatrex Liquid 480	Aatrex 4L (EPA Reg. No. 100-497)
Gavel 75 DF Fungicide	Gavel 75 DF (EPA Reg. No. 62719-441)
Touchdown iQ Liquid	Touchdown Herbicide (EPA Reg. No. 100-1117)
Reflex Liquid Herbicide	Reflex Herbicide (EPA Reg. No. 100-993)
Roundup Weathermax	Roundup Weathermax (EPA Reg. No. 524-537)
Banvel II Herbicide	Clarity Herbicide (EPA Reg. No. 7969-137)
Basagran Liquid Herbicide	Basagran Herbicide (EPA Reg. No. 7969-45)

Dealers should note that one of these products, Aatrex 4L, is a restricted-use pesticide (RUP). North Dakota law requires that any person buying an RUP must have a North Dakota certification. This holds true for Canadian customers as well. If dealers receive inquiries from Canadian customers wanting to buy Aatrex 4L, please remind them that they will need to demonstrate proof of North Dakota certification at the time of purchase.

People can contact the North Dakota Pesticide Certification and Training Program for information on how to obtain a North Dakota pesticide certification. More information on the GROU can be found on Health Canada's Web site at:

www.hc-sc.gc.ca/cps-spc/pest/agri-commerce/import/_grou-piapda/index-eng.php

EPA Rolls Out First Enforceable Endangered Species Protection Bulletin

Editor's Note: The NDSU Pesticide Program started talking about the Environmental Protection Agency's scheme to enforce endangered species protections in the 2007 training season and the EPA has posted its first bulletin to "Bulletins Live." The Wisconsin and Michigan bulletins will be the start of what is projected to be many bulletins to come. Labels with enforceable endangered species limitations are anticipated in the marketplace in 2010 for six insecticides.

The EPA, in consultation with the U.S. Fish and Wildlife Service (USFWS), is imposing limitations on the use of methoxyfenozide on cranberries in Wisconsin because of its potential effect on the endangered Karner blue butterfly. The limitations are contained in a series of county-specific Endangered Species Protection Bulletins that are available on the EPA's Web site at www.epa.gov/espp/bulletins.htm or by calling (800) 447-3813.

Bulletins are the implementation tool of the EPA's Endangered Species Protection Program (ESPP) and provide information to pesticide users about enforceable use limitations necessary to protect listed species and their designated critical habitat from potential harm due to the use of a pesticide. The ESPP is designed to address the EPA's responsibilities under the Endangered Species Act (ESA), while at the same time not placing unnecessary burdens on the

agriculture community and other pesticide users.

The EPA entered into consultation with the USFWS after determining that use of methoxyfenozide on cranberries in Wisconsin may affect the listed Karner blue butterfly. The USFWS recommended a number of use limitations that, when implemented, would result in use that is not likely to adversely affect the Karner blue butterfly. These limitations are effective within specific areas of the following Wisconsin counties: Adams, Burnett, Chippewa, Clark, Eau Claire, Green Lake, Jackson, Juneau, Marquette, Monroe, Polk, Portage, Waupaca, Waushara and Wood.

In addition to the bulletins that contain instructions for protection of the Karner blue butterfly in Wisconsin, the EPA also is releasing bulletins for six counties in Michigan (Allegan, Monroe, Montcalm, Muskegon, Newaygo and Oceana) for the protection of the Karner blue butterfly and for Door County, Wis., for the protection of the endangered Hines emerald dragonfly. These bulletins were not the result of consultation with the USFWS; rather, they simply implement current methoxyfenozide label restrictions through the Bulletins Live! online system.

These bulletins are effective and enforceable once referenced on the methoxyfenozide product label. The bulletins became available for use in May 2009. More information on the ESPP program in general is available at www.epa.gov/espp.

Information on how to use the Bulletins Live! system and a tutorial also are available on the EPA's Web site.

Minnesota officials find emerald ash borer infestation in St. Paul neighborhood

Plans under way to quarantine firewood and certain ash material in Ramsey and Hennepin counties

May 14, 2009 - ST. PAUL, Minn. – The Minnesota Department of Agriculture (MDA) today announced the discovery of an emerald ash borer infestation (EAB) in St. Paul just northeast of the intersection of Interstate 94 and Highway 280. This is the first detection of the destructive tree pest in Minnesota.

The infestation initially was reported to the MDA by Rainbow Tree Care Co. on Wednesday. After receiving the report and conducting an initial inspection, the MDA submitted larvae from the infested trees to the U.S. Department of Agriculture (USDA) for confirmation as EAB. The USDA made that preliminary confirmation this morning.

In response to this finding, the MDA plans to issue a quarantine prohibiting the movement of firewood, ash nursery stock, ash timber or any other article that could spread EAB in Ramsey and Hennepin counties. This quarantine is expected to be followed by a federal quarantine within days. MDA staff will conduct a thorough survey of trees in the surrounding area to assess the extent of the infestation. Information from this survey will help determine the response strategy implemented by state and local officials. The Minnesota Department of Natural Resources (DNR) and the USDA Animal and Plant Health Inspection Service (APHIS) are working closely with the MDA in the response.

EAB is an invasive beetle that attacks and kills ash trees. Its larvae kill ash trees by tunneling into the

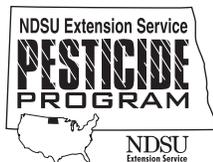
wood and feeding on the tree's nutrients. Since its accidental introduction into North America, EAB has killed millions of ash trees in 10 Eastern states. With an estimated 900 million ash trees, Minnesota is a prime target for EAB. Earlier this year, the MDA issued a quarantine for Houston County in response to an EAB infestation across the border in Wisconsin.

The metallic-green adult beetles are a half inch long and are active from May to September. Signs of EAB infestation include one-eighth inch, D-shaped exit holes in ash tree bark and serpentine tunnels packed with sawdust under the bark. While EAB spreads slowly on its own, it can hitch a ride to new areas when people transport firewood or other wood products infested with the larvae. Officials urge Minnesotans to take steps to keep EAB from spreading:

- Don't transport firewood, even within Minnesota. Don't bring firewood along on a camping trip. Buy the wood you need locally from an approved vendor. Don't bring extra wood home with you.
- Don't buy or move firewood from outside your area. If someone comes to your door selling firewood, ask them about the source of the wood.
- Watch for signs of infestation in your ash trees. If you suspect your ash tree could be infested by EAB, visit www.mda.state.mn.us/ and use the "Do I Have Emerald Ash Borer?" checklist.

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