

May 5, 2010

## ND State Seed Commissioner Warns of Illegal Durum Sales

There has been renewed interest in planting durum wheat in North Dakota since the announcement of new loan rates earlier this month. Since the production of commercial durum has fallen in ND, there has been a parallel reduction in durum seed production...so supplies may be limited or at a distance from demand. The North Dakota State Seed Department reminds producers that brown-bag seed sales are illegal.

Most durum varieties planted today are protected by Plant Variety Protection Title V that states the variety may only be sold as a class of certified seed. The buyer's proof of certification is either a valid seed tag or a bulk sale certificate issued by an official seed certification agency such as the ND State Seed Department. Seed sellers are required to provide this documentation with each container of certified seed sold. Seed regulatory agencies may ask for these documents when examining potential seed violations.

Additionally, North Dakota seed laws require that seed sold in North Dakota be labeled with specific information regarding the variety and quality of the seed in the container. The full name and address of the person who labels or offers the seed for sale must also be included. Proper labeling is required for all seed, whether it is a protected variety or not.

Brown-bagging seed is considered by some as a way to circumvent the legal process of seed sales and the payment of royalties or research fees to the variety owner. Violators of PVP Title V seed law may be fined, and those fines can extend to the conditioner, seller, buyer and anyone who assists in the unauthorized sale of protected varieties. While it is permissible for a farmer to save seed that he has legally acquired to plant on his own farm, farmer to farmer sales of bin run seed are illegal. It is also illegal for a seed conditioner to clean for sale, seed that a farmer has saved.

State Seed Commissioner Ken Bertsch states, "With the announcement of durum loan rates, brownbagging of seed became an immediate and major concern." He continued, "Aside from communicating and reminding industry of rules and law, investigating potential violations becomes the highest priority. We will have to remain in the enforcement mode long after the 2010 crop is planted. I cannot emphasize strongly enough; if it isn't a legal seed source, don't sell it and don't plant it."

Under current circumstances, given the unanticipated demand for durum seed, the temptation to circumvent seed laws by accessing seed from a neighbor may be strong. Participants in illegal seed sales must be aware: consequences of breaking seed laws are stiff for both buyer and seller (up to \$5000 fine per sale for violating PVP laws). Variety owners will also go after violators, and they can collect up to triple damages for the seed sold and the production from illegally acquired seed. It is the responsibility of all parties involved, the seller, the conditioner and the buyer to understand the limitations of PVP laws.

Seed certification ensures that high quality seed of known genetic identity and purity is available to the agricultural industry. Illegal seed sales are detrimental to the entire seed industry. The Seed Department monitors seed sale activities, including ads placed in state newspapers and trade magazines. Regulatory inspectors are currently in the field investigating activities related to illegal seed transactions, and will actively pursue violations throughout the year. Recognizing the special nature of the situation regarding durum plantings, the Seed Department will work with other agencies and seed industry partners to investigate violations and enforce seed laws.

For more information about seed sales or a list of protected varieties contact the State Seed Department or the USDA Plant Variety Protection website.

# # #

Media Contact: Ken Bertsch or Steve Sebesta – ND State Seed Department (701) 231-5400