



The North Dakota Seed Journal

DECEMBER 2012

Newsletter of the North Dakota State Seed Department

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Where Does One Begin?

Steve Sebesta, Deputy Commissioner

2012 was a rebound year for the Seed Department and we owe it all to the seed growers, conditioners, retailers and seed companies. After last year's disaster due to excessively wet weather that contributed to more than five million acres of preventive planting, seed production exceeded 300,000 acres for the first time since 2008.

It should be no surprise that the top five crops in terms of certified acres produced in our state are hard red spring wheat, barley, hard red winter wheat, durum and field peas. Those five crops account for more than 70% of our acres. It is for that reason we focused on spring wheat, barley and field peas when we initiated variety id testing as a requirement for certification. These are major crops and the importance of properly identifying and thus labeling the variety accurately is huge.

All told this year; we inspected 351 varieties of crops in the Field Seed Program. That does not include the Potato Program. Considering only our top five crops, we inspected 118 varieties.

Given the number of varieties that are grown in North Dakota, have you ever wondered what variety you should produce? Some of those decisions are directed by seed companies, but by and large, certified seed producers in North Dakota have the great luxury of making those decisions for themselves.

So where does one begin to determine which crops and varieties in which to invest one's resources for the next year? It's an important decision that your business needs to focus on soon for 2013 if you haven't already done so. We often get calls from seed producers who inquire about which varieties to grow, but our policy is not to direct growers toward any specific variety. There are many great varieties available and they all have their own strengths and weaknesses. Growers need to do some research.

There are a lot of resources available to help certified seed growers hone in on those varieties to produce next year. But above all, know your customers! Do you sell seed directly to your neighbor farmers or to a local certified seed conditioner/retailer? What are they telling you? University Extension information is very useful. NDSU yield trial data generally begins to pop up on REC websites early in the fall. Each December the Seed Department publishes the Seed Guide in cooperation with NDSU Extension and the North Dakota Crop Improvement and Seed Association. These are valuable resources to find the varieties that perform the best and possess the traits that make them locally adapted to your area.

Looking even deeper, the USDA National Agricultural Statistics Service, North Dakota Field Office, publishes production statistics of varieties of major crops grown on farms each year. The 2012 Wheat Varieties report shows that Barlow was the most widely grown variety overall. Closer examination of the data, though, reveals that Barlow was not the top variety in all nine reporting districts.

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North Dakota State

NDSSD

Seed Department

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From the Commissioner's Desk

So Many Questions... So Few Answers

Have you seen the TV commercials about “bundling” of communications services; land line, cell phone and internet? The one where the new neighbors show up with a puppy explaining that the entire neighborhood bundles, and the newbies should do the same for a gift of the cute little puppy?

Most of our readers, and most producers, have heard the buzz surrounding the issue of the Roundup Ready 1 (RR1) patent expiration. We get asked questions, even though we (the Seed Department) have little to do with the issue in regulatory terms. The questions are complicated due to the fact that there may be dual, “bundled” trait and plant protections. The issue is further confused when one of those protections expires.

I spoke with one of our licensed seed conditioners recently, who posed the question; if a grower intends to save seed of a RR1 variety this year, and wants me to condition the seed so he can store and use it for planting when the patent expires ... is there any risk for me? I'm paraphrasing his inquiry, but it's a great question.

The answer is; it depends. PVP laws create liability for a seed conditioner if that person knowingly contributes to “brownbagging” of seed. The law says conditioning **seed** of a protected variety is an infringement of the rights of the

Ken Bertsch..... State Seed Commissioner
Steve Sebesta..... Deputy Seed Commissioner
Willem Schrage..... Director, Potato Program
Joe Magnusson..... Field Seed Program Manager
Mark Hafdahl..... Seed Laboratory Manager
Jeff Prischmann.. Diagnostic Laboratory Manager
Kris Steussy..... Administrative Officer
Mike Oosterwijk..... Potato Program Supervisor

owner if the seed is sold illegally. Since conditioner liability issues involving **traits** are most often governed by stewardship or use agreements, I'm unsure how or if a seed conditioner may be seen as complicit in violation involving a trait patent.

The seed industry (growers, conditioners and retailers) is dealing with two issues: intellectual property protection for traits and plants (seed). The protection provided to the trait owner through trait patents prohibits the replant of crops containing the patented trait. In this situation, one of the few of the few facts in play is the RR1 trait patent expiration in the summer of 2014. But that's only part of the story.

Regarding the RR1 trait: unless the trait owner changes the terms of stewardship agreement language, the crop produced from seed purchased in 2014 (and previous years) will remain ineligible for replant regardless of patent expiration. I believe the term “grown during the life of the patent” applies in this case. If the patent expires in the summer of 2014, and the seed is planted in spring 2014, the crop produced from that seed would logically fall under the “life of patent” language. My interpretation is that seeds produced from the 2014 crop would be ineligible for replant in 2015. I haven't talked to anyone who yet who knows with certainty if this is the case.

Regarding the seed: the seed may be (and probably is) protected in some manner (PVP, plant patent etc.), and prohibited from replant. The restrictions on saving/replanting protected **plant** materials will be solely governed by

the companies owning the variety in question, and only the seed company will be able to guide growers in the legality of planting their variety that contains a trait (the RR1 gene in this example) in a post-patent environment.

Some sources suggest that replanting of RR1 varieties will be allowed in spring of 2015. Some growers think they will be able to replant varieties containing the RR1 gene in 2014, or earlier. In the case of the seed conditioner question ... some growers think they can carry over 2012 crop in inventory for a year, and plant it in 2014.

Based on all of the variables associated with dual protection of plants and traits ... I would be extremely cautious in assuming any of these are possible. In the case of saving 2012 or 2013 production for replanting ... that's simply a foolish strategy for a host of seed quality and legal reasons. Since I generally advocate for reasonable royalties and technology fees, and discourage the use of bin-run seed, working to find ways around the plant/trait protection process seems to have little value and much risk in production and legal terms.

The same philosophy is relevant to the question posed by the conditioner: I wouldn't take the chance on conditioning what might be an illegal seed product. There is no cute puppy in this bundle of potential problems, for the grower or conditioner.

Best wishes for a safe and happy holiday season.



New Seed Certification Rules Become Final

The Administrative Rules Committee of the North Dakota Legislative Council approved the Seed Department's proposed rule changes in September. Those rules became effective October 1. Most of the changes involved reorganization of existing rules into a more logical format and a clarification of confusing language. The new certification rules are available on our website www.ndseed.com in the **Field Seed Program** section.

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In fact, Barlow, Glenn and Faller each occupied first place in three of the nine districts.

In the central district, Barlow occupied 35.8% of the acres according to survey respondents. That was the greatest market share of any variety in any district. Glenn was the top variety in the Northwest district with 31.0% and Faller was grown on 29.9% of the acres in the Northeast district. Mott, a relatively new semi-solid stem variety from NDSU finally began to reach some critical mass. The solid-stem trait provides some tolerance to the wheat stem sawfly and was the third leading variety in the West Central, Southwest and South Central districts, where the sawfly is most prevalent.

These varieties are good examples of how local adaptation can drive demand. Following the initial excitement of a new variety release, the market tends to sort out which varieties are best adapted and most demanded in certain areas. Many varieties perform well and have an important niche. Seed producers shouldn't limit themselves to only the most widely grown variety. Many farmers look for opportunities to spread their risk and planting several varieties is an excellent way to accomplish that strategy.

Successful certified seed producers look for ways to meet their customers' needs.



ND Crop Improvement & Seed Association Annual Meeting Scheduled

Seed producers, conditioners and retailers are invited to attend the annual meeting of the North Dakota Crop Improvement and Seed Association, January 30 and 31 at the Doublewood Inn, Bismarck. In addition to the normal committee meetings, this year's annual meeting will be held in conjunction with NDSU's "Best of the Best" conference, which is always very informative. We hope to see you there.

Sign up for Online Data

The Seed Department Online Data tool is the quickest method to access your field inspection, seed testing and final certification records. Using the online data access tool is easy and fast. It is accessible from our website homepage. Go to www.ndseed.com and select ONLINE DATA. You will be quickly directed to the Customer Login Page where you will enter your login id and password. You will then have the option to view the different types of records.

- View Seed Inspections
- View Seed Lab Samples
- View Seed Certificates

Online data is not a substitute for hard copy reports. Customers still get the paper copies of all reports, this is just an easy way to track inspections and testing and to quickly find the results you're after. Best of all, it's secure. No one else has access to the information ... unless, of course, you give them your password.

If you are interested in using the online data access tool call Mary Jane to set up your password. We believe you will find it a useful tool.

Isolation Requirements

It has been brought to our attention by several of our field inspectors that some producers have become lax in providing proper isolation between inseparable other crops and varieties. Proper isolation helps maintain genetic purity by preventing mechanical mixture. In order to prevent contamination, certified seed fields must be separated from inseparable other crops and varieties by a fence row, natural boundary or a five foot strip which is mowed, sprayed or uncropped. The isolation must be in place before the inspector arrives or a re-inspection fee may apply if the inspector has to make a second trip to check for isolation.



Isolation strip separating two varieties of wheat.

Field Inspectors Needed for 2013

The Seed Department is looking for part-time field inspectors for the upcoming crop season. Currently, we have openings in Cavalier and McLean counties. The season is approximately six weeks, starting about the last week of June (depending on the season) until all assigned fields are completed, approximately mid-August. It is preferred that inspectors reside in the county in which they work.

Applicants must be in physical condition to walk fields, able to tolerate summer weather and be self-motivated.

Classroom and field training will be provided. State vehicle and per diem are furnished. Applicants must have a valid driver's license.

If interested contact Galen Briese at the NDSSD, 701-231-5440.

Reporting of Preliminary Test Results

Kris Steussy, Administrative Officer

In response to requests by several growers and in an effort to be more environmentally "green", the Seed Department will provide the option of no longer receiving preliminary test results.

Currently, as each test is completed on a sample, a report is generated and sent out. Depending on the number of tests requested on a sample and the test schedule in the two labs, you could receive a report for each test at different times. And if you submit multiple samples to our lab, it can be a challenge to manage all that paperwork.

So if you prefer to receive results only when all tests are completed, please contact Mary Jane at 701-231-5400 or mvolk@ndseed.ndsu.edu to opt out of the preliminary reporting.

Our methods of reporting results have not changed. You may receive all test results, including preliminary tests, by any of the following methods:

- 1. Online data** on the department website. Contact the department to set up a confidential user-name and password.
- 2. E-mail.** Contact the department with a valid e-mail address. Your address will not be shared with anyone and you will not receive any other e-mail from the department.
- 3. Fax.** Contact the department with a valid fax number, or note on your sample.
- 4. Phone.** Contact the Department with a valid phone number, or note on your sample.

Accuracy Required on Sampler's Reports

When submitting a sample for final certification it is critical that correct and accurate information is provided on the Sampler's Report. In addition to properly identifying the seed lot for labeling purposes, the information is used to determine which seed tests are performed on the sample. Once the samples are sent to the lab and the tests have been initiated, the labeler will be charged for the testing. When the seed is being conditioned, don't assume the labeler wants all tests on every lot of seed. Even though we encourage new germination tests after conditioning, a labeler may want to use a preliminary test result. Ask the labeler before submitting the sample which tests they need performed.



Canadian Seed Sales

We have received several calls from seed conditioners inquiring whether or not they can sell seed (specifically Faller and Prosper wheat) to farmers in Canada. The easy answer is no, especially if the variety is protected by the Plant Variety Protection Act. Protected varieties may only be sold into Canada with the variety owner's permission. Generally, these varieties are licensed to a Canadian company and only they can purchase and sell these varieties in Canada. Where applicable, Canadian licensees are identified under the variety name in the 2013 ND Field Seed Directory, or on our website, www.ndseed.com.



The Farmers Yield Initiative, or FYI, promotes legal seed trade, research, education, seed certification, and the enforcement of intellectual property rights authorized under the Plant Variety Protection Act (PVPA) and patent laws. The purpose of the initiative is to educate the public and encourage compliance with existing state and federal seed laws embodied in the PVPA and state seed certification regulations.

If you suspect illegal seed activity please consider submitting a strictly confidential tip to help put a stop to illegal seed trade. You need not identify yourself during the phone call. The caller can remain anonymous, and it is toll-free.

Phone completely confidential tips using the toll free number: **(877) 482-5907**

Email tips to:
tips@farmersyieldinitiative.com

Mail tips to: Farmers Yield Initiative
PO Box 8850
Fayetteville, AR 72703

Potato Program GHP/GAP Audits

Willem Schrage, Potato Program Director

To meet the demands of their customers, more potato growers are requesting audits as part of the USDA Good Handling Practices and Good Agricultural Practices program (GHP/GAP). In North Dakota this audit is performed by the federal/state inspectors of the Seed Department.

Food safety inspections at the final stages of the processing and distribution system are supported by an audit process. The objective of a produce or GHP/GAP-audit is to evaluate the grower's production and handling processes and provide proof that there is compliance with requirements as demanded by the customer. The audit processes put responsibility on the growers by requiring that their activities be recorded. This approach to ensuring food safety is done by taking measures to avoid contamination and verifying the actions by audits.

The audit process indicates what the producer has done to obtain the safest possible product. It is based on the grower's records. Present practices done by all growers on a regular basis, now need to be recorded for the farm to become eligible for GHP/GAP certification. Because the USDA has federal/state inspectors available at many places in the country, it is becoming more common for growers to request a GHP/GAP audit. In North Dakota, the number of GHP/GAP audits in the potato industry increased around 30% compared to last year. The last three years the numbers of audits had stabilized until the increase this year due to increased interest from fresh packers.

The USDA has reacted to the increased interest of the produce industry for audits in food safety by training its inspectors in the auditing procedures. The overall objectives of the inspection are to ensure that the quality of the produce meets the expected standards and to provide information as a basis for action and planning. They are used to determine acceptability or pay schedules. Economic reasons are the rationale for produce inspections. While inspections need to be frequent to verify the quality of the product, the audits require that growers maintain records themselves to indicate that the program objectives are met.



Monitor Your Bins

When temperatures fluctuate during winter months, monitor bins closely for any signs of heating or insect damage. If you did a pre-germ test in the fall and plan to use that result for labeling, it would be wise to probe the top and bottom of the bin and send a sample to the Seed Lab for a new germination test next spring to ensure the seed lot has not gone out of condition and is properly labeled. These procedures should avoid an unnecessary "Stop Sale", and allow you to sell a quality product to your customer.

People

Seed Lab Manager Retires

Mark Hafdahl

After almost 27 years at NDSSD, I have decided to retire. December 6 was my last day. I started my seed testing career in 1978 with Northrup King Co., in Minneapolis. There I had an opportunity to be a part of research in seed testing and production. I worked with many wonderful people and came away with a substantial knowledge of seed testing. In 1982, while at NK I earned an RST from the Society of Commercial Seed Testing.

In 1986 I started as Seed Lab Director at NDSSD. I have been here ever since. I have worked with some great people while here. Since 1986 we have added several tests due to the changes in the seed industry, most notably are the herbicide bioassay tests. I have been active in the Association of Official Seed Analysts, serving on the Executive Board and several committees.

My plans for the future include, spending time with my children and grandchildren, golf, travel, woodworking, maybe some hunting and fishing and sleeping late. For the near term, we intend to continue living in Fargo.

Thanks to all of our customers who trusted our lab with your testing needs.

Mueller Named Seed Lab Manager



Jeanna Mueller has been named Seed Quality Lab Manager effective December 15. Mueller has more than six years' experience at the department as a seed analyst. She started as a Seed Analyst II in 2006 and over the years achieved certification through the Association of Official Seed Analysts as a Certified Seed Analyst in both germination and purity testing. She was promoted to Senior Seed Analyst in 2010. More recently, Jeanna became a Registered Seed Technologist through the Society of Commercial Seed Technologists. Jeanna also has experience as a field inspector. We look forward to Jeanna's leadership in the Seed Lab.

Tufte Joins Department



Brianna Tufte has joined the Seed Department as a Laboratory Technician I and will split responsibilities between the Potato Seedstock Program and Diagnostic Lab. Brianna's primary responsibilities include tissue culture, greenhouse seedstock production and seed health testing. She has three years of experience at the department as a part-time employee and has experience in potato tissue culture and lab testing.

North Dakota State Seed Department

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NDSSD Calendar

- Dec. 31.....** Application deadline for Non-Resident Seed Dealers License
- Jan. 8-9** Lake Region Extension Roundup, Devils Lake
- Jan. 20-22** ND Grain Dealers Association Annual Meeting, Fargo Holiday Inn
- Jan. 21-22** Northern Pulse Growers 20th Annual Convention, Holiday Inn, Minot
- Jan. 23-25** KMOT Ag Expo, Minot
- Jan. 30-31** ND Crop Improvement and Seed Association Annual Meeting, Doublewood Inn, Bismarck