



The North Dakota Seed Journal

JUNE 2012

Newsletter of the North Dakota State Seed Department

Inside

- 1 Protecting the Integrity of the ND Seed Industry
- 2 How Long Does a Germination Test Take?
- 2 Bulk Certificates Reminder
- 3 Summer Hours
- 3 Seed Potato Inspection and Testing
- 4 Char Retires
- 4 Seed Regulatory Update
- 4 Summer Potato Virus Testing
- 5 Interim Agriculture Committee Tours Seed Department
- 5 Minto Farmer Fined for PVP Violation
- 5 2012 NDSU Research Extension Center Field Days
- 6 Calendar

Protecting the Integrity of the ND Seed Industry

Steve Sebesta, Deputy Commissioner

Some people have a negative viewpoint of regulatory programs. The word “punitive” automatically comes to mind. We have even been referred to as “seed police” by the host of a local radio program during a live interview following our press release announcing a recent PVP violation. I bristled at the term and immediately defended our obligation to protect those who legally make the seed industry in North Dakota vital and robust.

Regulatory programs exist to ensure that rules are followed. In the seed industry, these rules protect all parties involved in agriculture...from those who develop crop varieties to those who plant them on their farms.

In most states, seed regulatory programs are separate from the certification agency and often reside within state departments of agriculture. In North Dakota, the Seed Department is the state designated authority for regulatory and certification duties. This close association is unique, and one that we believe benefits everyone involved in the state’s seed industry. Recently concluded regulatory enforcement actions are good examples of the Seed Department’s commitment to protect the integrity of all aspects of the seed industry.

Protecting variety owners

Developers of crop varieties invest tremendous resources developing new varieties and they have an obligation to their stakeholders (private investors or public taxpayers) to protect their investments to ensure a return on their investment and their ability to continue reinvesting in future research programs. Whether the varieties are owned by a public institution or a private company, the Seed Department is committed to protecting the intellectual property rights of both.

Nearly all of today’s varieties are protected by PVP. Moreover, most of them are protected by Title V which means the seed must be certified by an official seed certifying agency. We believe the certification option is a powerful tool for the variety owner. Certification offers instant recognition of a quality seed product, which most often is produced by independent seed growers. Certification provides quality assurance through enforcement of production and handling requirements and minimum standards for genetic purity, seed-borne pathogens and varietal identity. In North Dakota, variety owners of spring wheat, barley and field peas, know that their varieties are labeled correctly because every lot of these crops is tested for variety identity before certification is completed and labels are issued. This testing is a significant value because it helps to ensure that the seed marketed with their company’s name is true to variety. Certification agencies have the unique ability to track legal seed transactions and enforce Title V of the Federal Seed Act. Through production, final certification and sales, certification provides traceability to ensure their products are produced and marketed correctly and legally. While separate, the Seed Regulatory and Certification Programs cooperate to protect the IP rights of the variety owner.

Protecting the Integrity continued on page 3

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Seed Department

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From the Commissioner's Desk

Change

Before the headline drives every prospective reader away, incorrectly assuming that this will be some cliché-ridden essay chock full of deep thoughts on change...no. Only some thoughts on what is happening to cropping patterns in our state. Although, I am a big fan of Deep Thoughts by Jack Handey (Saturday Night Live fans might appreciate this). And I did require our program managers to read *Who Moved My Cheese*, back when the book was seen as a great way to help people understand the affects of change in personal and professional terms.

Back on topic: I must assume that everyone was surprised by the prospective plantings report issued at the end of March, at least regarding wheat acres. Under six million acres of wheat in North Dakota? Fewer acres than planted in 2011 (with record prevent-plant acres affecting the final numbers)? Did I hear that correctly? I thought this was a wheat state?

I was convinced that six million-plus fallow acres and a reasonably strong wheat market would move acres upward, perhaps back to the 8-9 million range more commonly seen in the past five years. I know there are dozens of reasons for the shifting cropping patterns here; everyone in the industry knows the same. Economics. Improved varieties in corn and soy (especially). Risk/reward. Etc.

Perhaps it's the stubborn Scandinavian part of me, but I'm not ready (yet) to accept that this is permanent change. As we know, total wheat acres have trended down for years as production of other crops has increased. But there is one major change-factor that is yet to emerge in the wheat industry; one that has dramatically affected others: traits. Traits of all different types (GM and others) and functions. Some that improve grower economic return, and others that improve lives of consumers. Traits that have passed regulatory muster and are proven safe (even good) for people and the environment. Except for cereal crops.

But someday, this will change. Wheat growers are pleading for innovation, for competitive and other reasons, and the message is being heard. Consumer-market-public acceptance attitudes seem to be (finally) shifting to a more positive outlook for cereals. At some point, hopefully sooner than later, the cereals industry will realize the same

variety improvement benefit as other crops. This would be good change.

More good change: you will read in this edition of Seed Journal of the retirement of our long-time and much-loved "receptionist", Char Larson. The quotation marks are intentional; Char is much more to us and our customers than a receptionist. Good for Char, despite how much she will be missed by everyone.

More change, of the sad type. Many who read this newsletter are aware of the passing of Dr. Cole Gustafson, a veteran faculty member at NDSU. The loss of Dr. Gustafson deserves mention here, as he served the seed industry and Department as a member of the State Seed Commission. Cole was a true professional and gentleman, and will be greatly missed by all who knew him.

Best wishes for a safe and profitable season.



How Long Does a Germination Test Take?

Mark Hafdahl, Seed Lab Manager

Every year we get grass samples for germination testing that the producer needs to satisfy a government agency requirement. Most of those programs have a planting window that must be met in order to get cost sharing. Often, we get a phone call after about a week asking for the results of the testing. Many producers don't know that the test procedures that we must follow require up to six weeks for germination testing.

Most agricultural crops that produce a grain take 7 to 14 days for germination testing. Some of these require intermediate counts so these samples can't be planted every day. Additionally, there are periods during the year that we may get backed up a few days because of workload. These periods are mostly in February through April but can happen anytime.

Forage and CRP crops usually take 14 to 28 days and a few take longer. Each component in mixtures have to be separated by crop type and because of that, may take longer.

If you have a question about test duration, give us a call, but don't wait until just before you need the results. If you need a mixture tested, it helps if you send in a copy of the seed label so we know what we are dealing with.

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

Reminder...

Bulk Certificates are due July 1. Labelers are required to return all used bulk certificates and the corresponding Log Form by July 1. All unused bulk certificates must be returned also.

Summer Hours

Effective June 1 office hours are 7:30 - 4:00 Monday through Friday.

Protecting the Integrity continued from page 1

Protecting seed growers

Most of the seed sold in North Dakota is produced by independent seed producers. Regulatory enforcement helps ensure that everyone is playing by the same rules (labeling, certification, sales, etc). The enforcement action publicized in this issue of *The Seed Journal* (and the last two issues) demonstrates the department's resolve to investigate and when necessary, penalize those who violate law. Enforcement helps maintain the integrity of the seed industry and helps protect the seed producers who conduct their business legally and ethically. Brown-bag sales take business away from legitimate seed growers who work hard and operate within the rules to produce and market high quality seed products. A strong regulatory program protects the seed grower's business by ensuring that they can compete with other legal businesses on a level playing field.

Protecting retailers

Retailers provide a vital link between seed producers and consumers. Their businesses depend on regulation to monitor the quality of the product they sell and ensure that everyone involved in the seed business is operating under the same rules. Proper sampling, testing and labeling provides traceability that can assist retailers in legal situations also. Combined with certification, test results on samples collected by our regulatory inspectors have, on occasion, provided strong evidence to support retailers in disputes with farmers. This level of traceability has also proved invaluable in the courtroom.

Protecting consumers

Finally, a major responsibility of the Seed Regulatory program is to protect the consumers of North Dakota who purchase and plant seed products. Every winter and spring, our regulatory inspectors visit seed retail facilities across the state to inspect records and draw samples of agricultural seed. This program is not just limited to certified seed, but all seed products. Regulatory samples of agricultural seed are analyzed for purity, germination and in some cases varietal identity. Test results are compared to the package label. If the test results are outside the federal tolerances, a stop sale order is issued to the retailer. This sampling and testing program protects consumers by 1) ensuring the seed meets the label claim and 2) removing from public sale, those products that do not meet label claims. This helps build consumer confidence in the state's seed industry, leading to increased utilization of high quality seed.

You can help

The Seed Department periodically receives tips about alleged illegal seed activity. If the tip is determined to be credible, further action is taken. However, in some cases, there is insufficient evidence provided to justify action on our part. The Seed Department treats these tips seriously and we rely on the public to provide credible evidence when allegations about illegal activity are made. Confidential, anonymous tips can also be reported to Farmer's Yield Initiative if desired.

Our Mission

Our mission statement reads: "To assure the integrity of the seed industry through commitment to client service and product quality." To us, there is no better way to demonstrate this principle than to maintain strong seed certification and regulatory programs with the support of the state's seed industry.

Seed Potato Inspection and Testing

Willem Schrage, Potato Program Manager

Field inspection application forms for seed potato certification have been mailed to seed growers, but are also available in the Online Forms section on our web site www.ndseed.com. Application forms obtained from the web still need to be signed and printed copies need to be sent to the Fargo office.

Virus testing

NDSU will assist the industry again in determining which strains of Potato Virus Y are present in the state. Testing is a requirement for certification on all seed potato lots in North Dakota. 200 leaves per lot will be tested with ELISA at the Seed Department and any positive wells will be tested at NDSU with PCR for further determination of PVY-strains. The concern is that strains of PVY will turn up in the state that, under certain circumstances, will result in tuber necrosis. This will make PVY a quality issue for the fresh and processing market.

More information on recent developments with PVY can be found on the web site: www.potatovirus.com. On that website is a link to a University of Idaho Extension fact sheet titled "*Potato Virus Y Management for the Seed Potato Producer*", by Philip Nolte, Juan M. Alvarez and Jonathan Whitworth. It includes pictures with symptoms of PVY-strains on the leaves and on tubers.

Testing for the Potato Cyst Nematode

Soil surveying for the potato cyst nematode is still available and is an import requirement for Canada. To be eligible for export, U.S. seed potatoes must come from fields that have been sampled and found free from PCN. Please contact the ND Department of Agriculture to have fields sampled. If the number of requests stay within the budget there will be no cost to the grower, otherwise the cost will be shared.

Char Retires



After 24 years of service to the Seed Department and the state's agricultural community, Char Larson retired June 1. Char is one of the few remaining employees who worked at our old home in Hastings Hall and has witnessed a lot of changes at the department over the years. Since the current office opened Char has held down front desk duties, greeting walk-in customers and handling many other duties. But most of you know her as the friendly voice on

the other end of the phone when you call our office. Char had a tremendous knowledge of our business and was always willing to assist our customers with their questions about field inspection or lab samples, etc. We'll miss Char's cheerful attitude and customer service skills.

Char and her husband Mike look forward to spending a lot of time at the lake, traveling and spending time with grandchildren.

Seed Regulatory Update

Joe Magnusson, Field Seed Program Manager

Truth in Labeling Testing

The Seed Department sampled and tested approximately 1,200 samples for truth in labeling this spring. We found 39 seed lots that were improperly labeled or found to be out of tolerance with label claims. We also found eight lots of wheat and two lots of barley during variety testing for final certification that were mislabeled as to variety. Six of the wheat lots were conditioned from the wrong bins and apparently the bins were not labeled as to kind and variety. One lot claimed to be Choteau (a solid stem variety) but tested to be a variety with hollow stems. If this would have been sold as the variety Choteau and planted in a sawfly area of the state, the crop could have been destroyed. We also had one lot of seed that was sold to three farmers before final certification had been completed. The unconditioned carry-over seed was moved from the original bin to a smaller bin, the bins were not labeled and the grower forgot he moved the seed until it tested false for the variety submitted for final certification. Two of the farmers had already planted the seed and were notified of the mistake.

Seed Labeling Permits

Any person selling seed in North Dakota must first obtain a permit to sell seed in this state. If you are a certified seed grower and label seed in your name you must have a permit before you sell that seed. If you fail to get a permit, we will issue a stop sale order on your seed and you will not be able to certify or sell seed in the future until a permit is obtained. If you do not have a permit, call our office and we will send one to you.

Annual Report of Seed Sales

The annual reporting form for seed sales will be mailed to all permit holders the end of June. That form and any fees due must be sent back to the Department by June 30 or late fees will be applied. **The form must be returned even if you did not have any sales in the reporting period. If you wish to cancel your permit, check the appropriate box at the top of the form and return it within 30 days.** We also have a number of permit holders who are selling seed in ND but not reporting any sales or remitting the appropriate fees. If you are a certified seed labeler and sell your own seed, you still need to report the sales and remit fees. When we find unreported sales we will stop sale any seed from that labeler until corrective action is taken.

Summer Potato Virus Testing

Jeff Prischmann, Diagnostic Lab Manager

In July and August, the North Dakota State Seed Department Diagnostic Lab conducts the annual summer potato virus leaf test as a service to potato growers interested in testing their fields. Starting last year, the Seed Department implemented some important changes to this testing as a result of increased concerns over PVY necrotic strains causing tuber necrosis in potato growing areas. **Summer leaf testing is now mandatory for all seed lots. This requirement is for PVY testing only.** Prior to last year, only PVY latent virus carrier varieties, including Russet Norkotah, Shepody and Silverton, had to be tested for PVY.

These new PVY necrotic strains do not express visual symptoms easily and are thus difficult to visually identify in the field. Testing then becomes the only option to identify these strains. The Seed Department has been working with the NDSU Plant Pathology Department in identifying these PVY strains. PVY positive samples identified at the Seed Department will be tested by the NDSU Plant Pathology Department to determine PVY strain type using a DNA test.

All tests conducted at the Seed Department are ELISA tests. A sample size of 200 leaflets will be required for PVY testing. Growers should submit at least 220 leaflets for this test in order to ensure the proper sample size is tested.

A PVX test can be conducted on the same sample as a PVY test is conducted. **PVX tests are not mandatory.** Also, Bt-Cry3a tests will also be available at the same time for any grower interested in obtaining a GMO test. This test requires a minimum of 400 leaflets. Growers need to submit a 440 leaflet sample if a GMO test is desired. **GMO tests are not mandatory.** The PVY, PVX, and GMO tests can be conducted on the same sample. **Again, a 220 leaflet sample is required for PVY or PVX tests only. For a GMO test only or a GMO test with a PVY or PVX test, a sample of 440 leaflets will be required.**

In early July, each grower will receive an information packet containing instructions for collecting and submitting samples for testing, sample tags, and a test request form. Use the test request form to indicate when you would like to test. To ensure proper sample identification, the sample tags must be returned with the samples. Please contact the department if you have any questions on sampling and testing.



Interim Agriculture Committee Tours Seed Department

The North Dakota Legislative Interim Agriculture Committee toured Seed Department facilities April 24.

Seed Commissioner Ken Bertsch briefed the committee on overall department functions, and then they toured the Potato tissue culture and Foundation Seedstock area before meeting with managers of the Seed Lab and Diagnostic Lab.

The following day Mr. Bertsch and Willem Schrage, Potato Program Manager, briefed the committee on the bill draft to rewrite Century Code pertaining to seed potato certification and control areas. The bill draft will be considered by the Legislature during the 2013 session beginning in January.



Jeff Prischmann, Diagnostic Lab Manager, discusses genetic testing with the Interim Agriculture Committee.



Minto Farmer Fined for PVP Violation

Steve Sebesta, Deputy Commissioner

The North Dakota State Seed Department recently settled a case concerning state and federal seed law violations against a Walsh county farmer for an illegal offer to sell seed of a protected variety.

The Minto farmer agreed to pay the Seed Department \$5,500 in fines for illegally offering to sell bin run seed of Eclipse black bean. \$2,500 was conditionally suspended for three years. Eclipse, an NDSU release, is protected under the Plant Variety Protection Act and Title V of the Federal Seed Act.

Section 111 of the Plant Variety Protection Act (Infringement of Plant Variety Protection) specifically states that it is an infringement of the rights of the owner of a protected variety to sell or market a protected variety, or offer it for sale, without authorization of the owner. It is also an infringement to illegally condition or stock seed related to an unauthorized sale of a protected variety.

According to Section 501 of the Federal Seed Act, it is illegal to sell or offer for sale, seed of a variety protected by Title V that has not been certified by an official seed certification agency.

Additionally, it is a violation of state seed laws state to offer for sale, agricultural seed that is not labeled. Obviously the bin run seed was not labeled and his offer constituted a violation of state seed law.

State and federal seed laws were established to protect consumers and provide for standardization of purity and labeling requirements. Illegal seed sales are detrimental to the state's seed industry and the hundreds of legitimate seed producers, conditioners and retailers engaged in legal seed trade.

The Seed Department utilizes the revenues generated from fines related to seed law violations for public education about Plant Variety Protection, intellectual property rights, North Dakota state seed laws and seed certification.

We encourage everyone involved in the seed industry to closely read and understand seed laws. Links to pertinent regulations may be found on our website:

*Plant Variety Protection Act
Federal Seed Act Regulations Part 201
ND State Seed Laws (Chapter 4.1-53)
ND Seed Certification Standards (Chapter 74-03)*



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



2012 Field Days

- June 27** .. Central Grasslands Research Extension Center, Streeter
- July 10** ... Hettinger Research Extension Center
- July 11** ... Dickinson Research Extension Center
- July 16** ... Agronomy Seed Farm, Casselton
- July 17** ... Carrington Research Extension Center
- July 18** ... North Central Research Extension Center, Minot
- July 19** ... Langdon Research Extension Center
- July 24** ... Williston Research Extension Center
- July 31** ... Oakes Irrigation Research Center

North Dakota State Seed Department

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NDSSD Calendar

- June 15 ...** Field inspection application deadline for all crops except buckwheat, millet and soybeans requiring single inspection
- July 1** Bulk certificates and log forms due
- July 15** Field inspection application deadline for buckwheat and millet
- July 30** Seed labeling report due
- Aug. 1** Field inspection application deadline for soybeans requiring pre-harvest inspection only
- Sept. 15 ..** Research fees due