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**NORTH DAKOTA**  
**DEPARTMENT OF AGRICULTURE**

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November 28, 2010

Margaret Collins  
US EPA Region 8  
8P-P3T  
999 18th Street, Suite 500  
Denver, CO 80202-2466

Dear Margaret:

Enclosed please find a summary report for pesticide regulatory activities conducted by the North Dakota Department of Agriculture (NDDA) for federal fiscal year 2010 under our performance partnership grant with the U.S. Environmental Protection Agency.

The NDDA had a successful and busy FY '10, both with the pesticide enforcement program and pesticide initiatives. We met or exceeded all of our federal benchmark and commitments, working together to educate the public on pesticide-related issues, engaging on national issues of importance, and regulating pesticide users and dealers to ensure compliance with state and federal requirements.

We added some new members to our pesticide program in FY'10, becoming fully staffed for the first time in several years. Each of these new members brings new skills, experiences, and perspectives to our team to augment our existing resources and allow us to more effectively fulfill our mission. We added three new inspectors: Derek Woehl, Sara Beaudrie, and Jim Jeske. Spencer Wagner, a fertilizer and pesticide specialist, was also added. Spencer oversees fertilizer regulatory program, although he also assists with pesticide label review and other aspects of the pesticide registration program. Last, Jeremiah Lien was hired as a pesticide outreach specialist, a non-regulatory, fully state-funded position created by the 2009 legislature to allow us to more effectively educate the public on state and federal requirements.

We focused considerable resources in FY' 10 on pesticide water issues. Jessica Johnson worked with her Water Quality Advisory Committee (WQAC) to design and implement a statewide survey to monitor surface water for pesticides. Together with the ND Department of Health, we monitored 33 river sites statewide for 180 pesticide active ingredients and degradates. Jessica also worked with the FWS, ND Game and Fish Department, and EPA Region 8 to implement a targeted surface water monitoring project for possible spawning areas for the endangered pallid sturgeon in the Yellowstone River. Results from these studies show once again that ND rivers and streams are relatively free of pesticide contamination. We also hosted or participated in

seventeen public meetings in FY' 10 that were focused on educating the public on pesticide label language relating to surface water. We also used those opportunities to brief participants on *National Cotton Council v U.S. EPA* and progress towards finalizing NPDES permits for aquatic pesticide users.

We continued to operate under our risk-based regulatory strategy that was developed in 2007, focusing our resources and attention on those pesticides and practices that pose the greatest risk to human health and the environment. We also allocated resources towards education and compliance assistance to complement our enforcement program. The NDDA continues to use inspection benchmarks for all enforcement staff to increase productivity and focus resources on regulatory priorities. The Department allocated regulatory resources away from lower-risk activities such as record-keeping and bulk repackaging to activities such as use inspections and fumigants where we are best positioned to educate users and change behavior.

Our pesticide regulatory program was robust in FY 10, conducting a total of 658 inspections. This number of inspections was slightly lower than past years, largely because the NDDA operated with only three inspectors for the peak pesticide use season. We levied only 143 enforcement actions in FY 10, indicating that approximately 78 percent of our inspected entities were compliant. For reference, we had a compliance rate of 77 percent and 79 percent in FY 09 and 08, respectively. The compliance rate in FY 07, immediately before the NDDA implemented its risk-based enforcement strategy, was only 54 percent; the rate of compliance in FY 06 was only 67 percent. This high rate of compliance supports our contention that a mix of regulatory and non-regulatory approaches is needed to obtain and maintain a high rate of pesticide compliance. It also validates anecdotal feedback that most members of the regulated public will comply with pesticide requirements if they understand what those requirements are. Simply put, our risk-based enforcement strategy is working.

Members of our pesticide program were engaged on national issues in as well. Jessica Johnson is a member of the State FIFRA Issues Research and Evaluation Group (SFIREG) Environmental Quality Issues (EQI) Working Committee. This group works with EPA/OPP on a variety of pesticide issues, such as establishing aquatic life benchmarks, evaluating screens for endocrine disruptors, pesticide contamination of groundwater and surface water, and pesticide disposal. Jim Gray is currently chair of the SFIREG Pesticide Operations and Management (POM) Working Committee, a group of state regulators that works with EPA on pesticide labeling, enforcement, and certification issues. Together with Andrew Thostenson at NDSU and EPA Registration Division Director Lois Rossi, Gray led a label training day with over 70 EPA staff members to identify and discuss unenforceable and vague pesticide label language as part of an ongoing effort by the SFIREG POM Committee to improve pesticide labeling. Gray is also the lone state representative on EPA's web-distributed labeling workgroup that is exploring the potential use of web-based tools to provide users with streamlined, site-specific and easy to understand labels to improve label comprehension and compliance.

The NDDA also participated in two North Dakota field tours in FY 10 with EPA staff members to offer a North Dakota perspective on regulatory issues. The first tour, conducted in concert with the ND Grain Growers Association, addressed challenges involved with using agricultural pesticides in ND. The tour included discussions on pesticide use limitations near surface water and difficulties in complying with and enforcing boiler-plate surface water use restrictions in

prairie pothole country. EPA staff members were also briefed on current pesticide drift technology and how it can be utilized to reduce off-target pesticide movement.

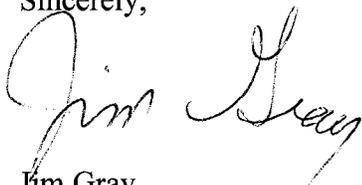
The second tour, conducted jointly with our tribal pesticide partners at Standing Rock Sioux Tribe, was focused on prairie dog management and use of rodenticides. EPA staff from headquarters and EPA Region 8 toured prairie dog towns on Standing Rock reservation. An open forum with ranchers, state and tribal wildlife officials, and pesticide regulators was facilitated in an effort to educate participants on the impact that prairie dogs have on rangeland, how prairie dogs are managed, ecological concerns with registered rodenticides, and pesticide enforcement issues with registered and unregistered pesticide tools.

Dave Phillips led in effort to review our pesticide administrative rules in FY'10 to identify changes needed to ensure compliance with the federal bulk pesticide container and containment regulations. Changes were also identified to improve readability and comprehension. We recently held a stakeholder meeting to solicit input on the proposed changes and hope to have rule making completed in FY 11.

In conclusion, I am proud of our pesticide program and their accomplishments over the past year. I value the partnership that we have with EPA Region 8 and our tribal partners, and I look forward to working with the Agency for years to come.

I hereby submit this report for your review. Please contact me at 701-328-1505 or [jgray@nd.gov](mailto:jgray@nd.gov) with any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Jim Gray". The signature is written in black ink and is positioned above the printed name.

Jim Gray  
Pesticide, Feed, and Fertilizer Division Director

# North Dakota Department of Agriculture



## FY 2010 Pesticide Performance Partnership Program End of Year Report

### A. Worker Protection Standard (WPS)

#### Core Activities for WPS

##### 1. Conduct Outreach and Education

- During WPS inspections, certification training sessions, and other outreach opportunities, the NDDA informed pesticide workers and handlers about the protections provided by WPS, how to report occupational pesticide exposure incidents and illnesses, and how to file complaints to NDDA regarding potential WPS violations.
- The NDDA continued to promote and ensure compliance with the WPS at high risk, high exposure situations and facilities. NDDA focused its WPS outreach and compliance monitoring on operations with workforces of workers and handlers, as well as operations that have had previous WPS violations. Of the sixteen WPS inspections conducted in FY 10, five were conducted at greenhouse facilities. Greenhouses were chosen due to the high potential of pesticide exposure to employees and the public.
- The NDDA distributed over forty *How to Comply* manuals to affected parties in FY 10.
- The NDDA discussed the WPS at all commercial and private certification training sessions in which we are invited to attend.
- The NDDA discussed WPS at two targeted outreach opportunities, these being a meeting of 35 persons at Hurdsfield Grain in Hurdsfield, ND in March 2010, and one with 22 persons with Harmson Farms and Greenhouse in February.

- During all WPS outreach opportunities, the NDDA provided WPS How to Comply (HTC) manuals or informed participants how they could access the HTC manual. NDDA staff members also distribute the HTC manual during inspections when appropriate.
- A link to EPA's Worker Protection Standard website is provided on the NDDA homepage ([www.agdepartment.com](http://www.agdepartment.com)).

## 2. Support WPS Worker & Handler Training

- NDDA assisted with the distribution of WPS training materials and coordinated with WPS training providers to ensure that WPS training is occurring and that sufficient WPS training materials and resources are available. WPS training providers include NDDA staff and any certified applicator.

## 3. Coordination and Follow up

- The NDDA has a mechanism to respond to WPS-related and worker safety complaints. These incidents, and other incidents involving potential human exposure to pesticides, are immediately moved to high priority.
- The NDDA has a dialog with the ND Labor Department and the ND Department of Health when occupational pesticide exposures result in illnesses. No situations resulting in illnesses were identified in FY 10.
- The NDDA developed a WPS public information packet in FY 08. The packet, including WPS posters and other information, is distributed to regulated entities during WPS inspections.

## Supplemental Activities for WPS

### 1. Provide comments on WPS Proposed Part 170 (WPS) Regulation Changes

- Part 170 was not open for public comment in FY 10. Therefore, the NDDA did not provide comments

### 2. WPS Train-the-trainer

- The NDDA does not recognize the Train-the-Trainer program. The NDDA attempted to coordinate training activities with third-party training providers that focus on training migrant workers. However, due to changes in agricultural practices, there are significantly fewer migrant workers in ND than in the past.

Therefore, the NDDA is unaware of any full-time training providers in ND that focus on migrant workers.

3. Support the national strategy for outreach to health care providers

- The NDDA continues to support the national strategy for outreach to health care providers and to look for ways to continue a dialog with the medical community. NDDA distributed copies of EPA's revised *Recognition and Management of Pesticide Poisonings* to health care providers upon request.
- Information on the Healthcare Initiative is provided on the NDDA home ([www.agdepartment.com](http://www.agdepartment.com)), including a link to download the document *Recognition and Management of Pesticide Poisoning.s*

Worker Safety Reporting Requirements

- The NDDA has included its reporting form for pesticide worker safety
- The NDDA had two inspections that identified worker safety violations. The first case involved Dakota Growers Pasta Company in Carrington, ND. During an inspection, a NDDA inspector identified that the company was fumigating returned food products in van trailers before unloading the products in a warehouse. The company did not have a fumigation management plan for trailer applications. A warehouse worker unloaded a trailer before it was determined that gas concentrations were below safe levels. The NDDA took enforcement action.

The second case was initiated in FY 09, but concluded in FY 10. In the case, a certified applicator at CHS in Grandin, ND conducted structural fumigation over Labor Day weekend. The certified applicator in charge initiated the fumigation on Friday afternoon and then left for the holiday weekend. An untrained worker entered the fumigated structure without respiratory protection to monitor gas levels. The NDDA took enforcement action.

- No worker-related incidents were reported to the ND Labor Department or the ND Department of Health
- The NDDA did not develop any new WPS-related outreach materials in FY 10.

## **B. Pesticide Water Quality Protection**

### Core Activities for Pesticide Water Quality Protection

#### 1. Activities for Water Quality Protection

- The NDDA continued to work with its Water Quality Advisory Committee (WQAC) in FY10 to evaluate and resolve pesticide water quality issues. The WQAC is comprised of several state and federal agencies, including the ND Department of Health, the ND Geological Survey, ND Game and Fish Department, NDSU Extension Service, US Geological Survey, US Fish and Wildlife Service, USDA-NRCS, the State Water Commission. The WQAC met twice in FY 10 to update each other on pesticide detections in groundwater and surface water, as well as to identify regulatory priorities.
- The NDDA developed a decision flowchart for evaluating Pesticides of Interest and identifying Pesticides of Concern in FY 09. Using that process, the NDDA had originally identified 124 Pesticides of Interest. The NDDA continues to evaluate 10 percent of those Pesticides of Interest each year using modeling and monitoring data. These evaluations are captured in the POINTS database.
- The following pesticides were evaluated and eliminated from the Pesticides of Interest list in Fy'10: quizalofop, ethofumesate, nicosulfuron, diflufenzapyr, imazapic, propiconazole, oxamyl, sethoxydim, sulfometuron, and Imazethapyr
- Due to at several surface water detections approaching 50 percent of the aquatic life benchmark level, both atrazine and metolachlor were classified as Pesticides of Concern in FY'10.
- Diuron, identified in as Pesticide of Concern in FY 09, was moved to “actively managed” status in FY 10 due to continued monitoring for the herbicide in surface water.
- The WQAC reviewed the Generic State Management Plan (GSMP) for pesticides in groundwater and discussed pesticide detections in groundwater in the last fiscal year. The GSMP has been circulated to WQAC members for their review, and any updates will be submitted to EPA.

#### 2. Investigate and respond to water resource contamination by pesticides

- No reports of water resource contamination by pesticides were reported by the ND Department of Health or the public in FY 10. In addition, no surface water detections were identified at levels that met or exceeded aquatic life benchmarks.

3. Meet with NDDH – CWA Section 303(d)
  - The NDDA met with the ND Department of Health (NDDH) and other members of the WQAC to discuss CWA Section 303(d). It was concluded that there were no pesticide-impaired waters in ND per Section 303(d).
4. Work with NDDH to assess urban watersheds
  - The NDDA met with NDDH and other members of the WQAC to discuss urban watersheds per our cooperative agreement. With the exception of detections of diuron in the Souris River in FY 08, we have not had detections of any pesticides in ND surface water at levels at or exceeding aquatic life benchmarks. However, many of the sampling sites for the surface water monitoring projects in FY 10 were chosen to be downstream urban areas of North Dakota, such as Minot, Fargo, and Grand Forks.
5. Target use inspections according to high risk for ground and surface water
  - Although we have not had recent groundwater and surface water detections that raise concerns, North Dakota NDDA targeted pesticide use inspections and regulatory activities in certain areas of the state. The NDDA also conducted 20 chemigation inspections due to concerns for groundwater contamination in sandy soils.
6. Continue to monitor compliance and enforce labeling as part of inspection strategy
  - NDDA monitors compliance and enforces pesticide labeling as part of all use inspections. NDDA conducted 64 and 8 agricultural and non-agricultural use inspections, respectively. During these use inspections, NDDA educates users of all restrictions, precautions, and directions on labeling, including those related to water quality.
7. Report on national water quality measures developed through OMB PART analysis
  - NDDA submits all measures developed through the OMB PART analysis, including water quality measures
8. Make water quality data available to EPA Region 8
  - NDDA coordinated surface water monitoring projects in FY 08, FY 09, and FY 10. The NDDA has provided copies of all reports to EPA Region 8 and will continue to do so in the future. The FY 09 report was submitted to EPA in early 2010. The report from FY 10 will be finalized and submitted to EPA by early 2011.

9. Report all water quality outcome measures in end of year report
  - Water quality outcome measures are included with this report

#### Supplemental Activities for Pesticide Water Quality Protection

- The NDDA worked with the North Dakota Department of Health (NDDH) and other members of the WQAC to design and implement a pesticide surface water monitoring project in FY 10. The project monitored levels of 180 pesticides and/or pesticide degradates in 33 river sites statewide (Figure 1). These 33 sites were sampled six times from May through mid-October. The NDDA contributed \$28,000 of state funds to the project and worked with the NDDH to obtain a CWA 319 grant. Results of the study will be provided to EPA Region 8 and the public.
- A copy of the FY09 pesticide surface water monitoring report was sent to EPA Region 8 in February of 2010.
- The publication, *Protecting North Dakota's Groundwater from Pesticide Contamination: What You Need to Know*, was distributed to the public at numerous commercial and private certification training sessions, trade shows, and other outreach opportunities.
- NDDA participated in and/or hosted 17 public meetings in FY 10 that included a total of 1,255 participants. The focus of these meetings was to educate the public on current pesticide label language relating to surface water and the need to comply with label restrictions on or near surface water. Discussions also included briefings on NPDES permits and *National Cotton Council v U.S. EPA*.

#### **C. Endangered Species Protection Program (ESPP)**

##### Core Activities for ESPP

- The NDDA evaluated the potential for all pesticide use allowed under Section 18 exemptions and new 24(c) registrations issued to impact listed species. Specifically, the NDDA performed endangered species evaluations on two Section 18 exemptions and five Section 24(c) registrations in FY 10. The evaluations were coordinated with the Bismarck field office of the US FWS and provided to EPA.
- No Bulletins have been published for North Dakota. Therefore, the NDDA has not reviewed any Bulletins for accuracy as required by our cooperative agreement.

- The ESPP was discussed during private certification trainings. Notepads, pens, and flashlights with information on the EPA endangered species program were given away at numerous farm and trade shows.

#### Supplemental Activities for ESPP

- NDDA is willing and anxious to provide EPA with data and recommendations on mitigation the risk of pesticides in North Dakota to threatened and endangered species as part of a state-initiated ESPP. NDDA submitted their proposed state-initiated plan to EPA in early 2009. However, EPA has not approved or offered feedback on the plan. Therefore, NDDA has not provided EPA with data and recommendations outside of occasional comments through the registration review process.
- NDDA submitted comments to EPA on the FR Notice regarding a petition to establish rule-making for Bulletins
- NDDA worked with U.S. FWS, ND Game and Fish Department, and EPA Region 8 to implement a targeted surface water monitoring project for possible spawning areas for the endangered pallid sturgeon in the Yellowstone River. Results are currently being compiled, and indicate that any pesticides found in those areas are below levels of concern.

#### **D. Pesticide Container and Containment Program**

- NDDA held several meetings with staff members to review its state container and containment regulations to ensure compliance with both the residue removal requirements and the federal containment regulations. Proposed changes to state administrative rules were drafted in late FY 10. NDDA held a public stakeholder meeting for November 2010 to solicit feedback on the proposed changes. Formal rule-making will be initiated in early calendar year 2011.
- The container and containment requirements were discussed at every private certification session in FY 10, along with several other venues to educate the regulated community. Staff members also participated in several one-on-one outreach opportunities with facilities affected by the regulation.
- The NDDA discussed the container and containment regulation in detail during three targeted outreach venues. These included a meeting of 120 pesticide dealers during the ND Grain Dealers Association annual meeting in March 2010, the Upper Midwest Aviation Symposium in March 2010, and a conference call with Winfield Solutions dealers and distributors in August 2010.

## E. Pesticide Enforcement Program

### General Comments

- The pesticide enforcement program is comprised of two persons in the Bismarck office (pesticide enforcement supervisor and a program specialist) with six inspectors regionalized across the state. Due to a recent change in department administration, the NDDA experienced a significant reorganization in FY 10 and much of the hiring was delayed. In addition, several members of the pesticide program retired or resigned in FY 10. Therefore, although we are now largely fully staffed with inspectors, half of the inspector positions remained vacant for several months in FY 10.
- The pesticide enforcement program conducted a total of 658 pesticide inspections in FY 10 (Figure 2). Although this represents an 11 percent decrease compared to the number of inspections in FY 09, this is largely due to the fact that the NDDA operated with only three inspectors for several months of FY 10, and more experienced staff allocated significant time to train new team members.
- A breakdown of these 658 inspections can be found in Table 1 below. More detailed information on the NDDA's pesticide enforcement activities for FY 10 can be found in the enclosed *EPA Form 5700-33H*.
- The NDDA issued a total of 143 enforcement actions in FY 10, including 96 warnings and 47 civil penalties (Figure 3). Pesticide civil penalties issued by the Department totaled \$13,400 (Figure 4)

When compared to the number of inspections, the 143 enforcement actions issued in FY 10 indicates that approximately 78 percent of the inspected entities were in compliance with existing pesticide laws and administrative rules. This is comparable to the compliance rate of 77 percent and 79 percent documented in FY 09 and 08, respectively.

For reference, the compliance rate in FY 07, immediately before the NDDA implemented its risk-based enforcement strategy, was only 54 percent; the rate of compliance in FY 06 was only 67 percent. This continued high rate of compliance supports our contention that a mix of complementary regulatory and non-regulatory approaches is needed to maintain a high rate of pesticide compliance. It also validates anecdotal feedback that most members of the regulated public will comply with pesticide requirements if they understand what those requirements are.

- The Department prioritized activities towards pesticide users and dealers in high-risk categories, as well as shifted resources to outreach and use inspections as a means to increase compliance. The NDDA continues to use inspection benchmarks for all enforcement staff to increase productivity and focus resources

on regulatory priorities. The Department focused regulatory activities away from lower-risk activities such as record-keeping and bulk repackaging to activities such as use inspections where we are best positioned to educate users and change behavior.

#### Core Activities-WPS Compliance and Enforcement

- The NDDA conducted ten WPS Tier 1 inspections and six WPS Tier 2 inspections in FY 09. Our goal was to conduct ten and five Tier I and Tier II inspections, respectively. The NDDA did not identify any WPS violations or issue any WPS enforcement actions. In comparison, the NDDA issued zero WPS enforcement actions in FY 09, nine WPS enforcement actions in FY 08, and 22 and 15 WPS enforcement actions in 2007 and 2006, respectively. This indicates an improvement in WPS compliance over the past five years.
- WPS inspections were conducted consistent with the WPS Inspection Guidance.
- Pesticide inspections and outreach, including activities pertaining to WPS, were prioritized relative to practices that posed the greatest risk to human health and the environment. WPS compliance assistance and outreach activities are discussed in the Worker Protection Standard section earlier in this report.
- The NDDA continued to operate under its pesticide complaint response policy that was revised in FY 10. Under this response policy, the Department prioritizes its workload and allocates its resources towards those activities and incidents posing greatest risk. In FY 10, NDDA increased its WPS enforcement and compliance activities in greenhouse settings due to the high potential for pesticide exposure. Of the sixteen WPS inspections conducted in FY 10, five were in greenhouses.
- The NDDA continues to give high priority to follow-up inspections at establishments with prior enforcement history.
- No NDDA staff attended training in FY 10 specific to WPS because no EPA-sponsored WPS training was available. However, several members of the enforcement staff have attended WPS PIRT courses in the past, and these inspectors trained new staff members.

#### Core- Producer Establishment Inspections

- The NDDA conducted 69 inspections of producer establishments in FY 10 to ensure compliance with state laws and administrative rules. We noted ten violations from these inspections, two of which received civil penalties, and eight of which received a warning.

- NDDA staff discussed the container-containment regulation during all producer establishment inspections.
- The NDDA was not requested by EPA to conduct any sampling of antimicrobial products.

#### Core- E-Commerce

- Bismarck office staff monitor E-commerce advertising such as electronic want ads sites for individuals selling pesticides and offering commercial application services. Individuals were called directly from the Bismarck office and instructed to remove ads for unregistered products, cease operations if uncertified, or remove inappropriate wording from their ads. Since the Department was operating with only half of its inspection staff for much of the fourth quarter of FY 10, the NDDA was unable to follow up with onsite inspections of the businesses and persons in question. However, we did verify that any unacceptable claims were removed from websites and web-based advertisements.

#### Core- Misuse

- The NDDA addresses pesticide misuse to mitigate risk to human health, food safety and the environment. A core principal of the NDDA's pesticide enforcement program is that compliance with pesticide laws and regulations will not result in a risk of unreasonable adverse effects. Therefore, we verify compliance during inspections and investigations. When misuse is identified, we take regulatory action and verify that non-compliance has been corrected.
- The NDDA did not receive any Section 27 referrals in FY 10.

#### Core Activities- Pesticide Infrastructure

- The NDDA sent personnel to applicable training in FY 10. Bryant Huso attended one container/containment PIRT course and one PIRT course focused on fumigants. Kevin Coufal attended one container/containment PIRT course and one PIRT course focused on soil fumigants.
- The NDDA launched a new pesticide enforcement database and document management platform in FY 10. Using laptops and electronic inspection forms, inspectors can capture relevant information and evidence from inspections and investigations. Inspections, along with photos and other evidence, are then uploaded to the password-protected database. The platform has resulted in standardized inspections, improved efficacy, and allowed for more timely review of cases.
- The NDDA continues to build and maintain relationships with our tribal regulatory partners. Tribal regulators were invited to regulatory planning

meetings, and NDDA staff members provided training to tribal pesticide regulators on a number of occasions. In addition, the NDDA worked with our tribal partners at the Standing Rock Sioux Tribe to host a prairie dog tour in FY 10 with EPA staff from Region 8 and Headquarters.

#### Core Activities- Compliance Assistance

- The pesticide enforcement program dramatically increased its level of outreach with the regulatory community starting in FY 08. We continued with this focus in FY 10 in an effort to use both regulatory and non-regulatory approaches to increase compliance.
- Staff members participated in all commercial certification trainings in FY 10, either in person or via videoconference. In addition, we provided outreach to over 1,800 members of the public in 46 other meeting settings, including private certification sessions, NDDA-sponsored meetings, and other meetings of growers, dealers, and applicators to which we were invited to participate.
- The NDDA added a state-funded pesticide compliance specialist to the pesticide program in FY 10. This person does large-group, small-group, and one-on-one pesticide education and compliance assistance with agricultural and non-agricultural pesticide dealers and users in an effort to improve compliance.
- The NDDA uses the EPA Region 8 agricultural compliance assistance center as a source of outreach tools. We order multiple different publications from the compliance assistance center, including pesticide signs, WPS starter kits, WPS posters, heat stress cards, and the publications *What You Need to Know About Pesticide Poisoning* and *Play It Safe: Reduce Your Child's Chances of Pesticide Poisoning*. Our inspectors hand out the pesticide signs, WPS starter kits, WPS posters, and heat stress cards to dealers and applicators to help get them into compliance with our pesticide laws and rules. Inspectors distribute the publications at our Department booth at various trade shows throughout the state.

#### Core Activities- Cancellations, Suspensions, Other Major Regulatory Actions

- The NDDA tracks product cancellations and suspensions at the federal level. NDDA did not perform any targeted inspections dealing with product cancellations and suspensions because no cancellations or suspensions occurred in FY 10 with pesticides that are widely used in North Dakota. In addition, NDDA was understaffed for much of FY 10, and we focused on higher priority regulatory issues.

### Core Activities- Imports and Exports

- NDDA conducts import and export inspections upon request from EPA Region 8. NDDA did not receive any requests or referrals for these inspections in FY 10.
- NDDA continues to track the pesticide harmonization issue and progress towards adoption of NAFTA pesticide labels. However, since the regulatory barriers to NAFTA labels have largely been resolved, adoption of NAFTA labels by registrants will depend on legislative changes. Since this is out of the control of the NDDA, we have focused our attention on more pressing regulatory matters.

### Core Activities- Section 18, Section 24(c) and Experimental Use Permits

- The NDDA did not conduct any targeted inspections of pesticide uses under Section 18 exemption or Section 24(c) registrations. This is because all use inspections are random and none of 104 use inspections conducted in FY 10 involved those special uses.
- The NDDA conducted two Experimental Use Permit (EUP) inspections in FY 10.

Angela Keller conducted an Experimental Use Inspection on October 19, 2009 with George Linz of USDA Wildlife Services. Gonacon (EPA # 56228-EUP-40) was used in feral horses in TR National Park to help control the population of wild horses. 165 feral horses were brought in and 28-30 mares got the vaccine. The rest of the mares (control) got a 2 mL shot of saline. It was a joint collaboration with Colorado State University, National Wildlife Research, and National Park Services. All proper PPE was on site and used. All syringes were individually labeled with requirements on label. The syringes were kept in the refrigerator until they were ready to be used. There were then kept on ice in a cooler. The vaccine was injected by hand to the horses left hip, unless there was an existing injury. Extra vaccine and all used syringes went back to National Wildlife Services. Everything was in compliance at the time of inspection.

Kevin Coufal conducted an EUP inspection in FY 10 involving the unregistered use of a seed treatment. No violations were identified.

### Core Activities- Antimicrobial Pesticides

- The NDDA was not requested by EPA to conduct any sampling of antimicrobial products. Because of this, the NDDA allocated its resources to other pesticide regulatory priorities.

### Core Activities- Endangered Species

- NDDA staff continues to maintain open communication and a close working relationship with the Bismarck field office of the US FWS on any pesticide cases involving migratory or listed species.
- The NDDA verifies compliance with labeling during all pesticide use inspections and for cause inspections, including labeling restrictions or directions related to endangered species. Bulletins have not been published for ND and very few labels have use restrictions specifically for endangered species. Therefore, we did not make special note of pesticide labels encountered during inspections that had endangered species restrictions.
- Although the NDDA noted a number of label violations in FY 2010 during use inspections and for cause inspections, none of those violations involved endangered species language.
- During the last week of June 2010, local television media reported that over 200 Western Prairie Fringed Orchids had been killed by a pesticide in the Sheyenne National Grasslands in southeast ND. By the time the story broke, FWS was actively investigating the situation. Kevin Coufal conducted an investigation to determine if there were any violations of pesticide regulations. Coufal identified that the applicator was not certified in ROW and was not under direct supervision. FWS agreed to share their file at the completion of their investigation. The NDDA will conclude its investigation if and when we receive the case file from FWS.

### Core Activities- Inspection and Sample Collection

- With a few exceptions, the pesticide enforcement program met or exceeded all inspection benchmarks included in the cooperative agreement for FY 10 (see Table 1 below).

Table 1. A breakdown of NDDA pesticide inspections for FY 2010.

<b>Inspection or Sample Category</b>	<b>Cooperative Agreement Commitment</b>	<b>Number Conducted</b>
Agriculture Use	50	64
Agriculture Follow Up	20	40
Non-Agricultural Use	8	8
Non-Agricultural Follow Up	5	9
Experimental Use*	2	2
Producer Establishment	40	69
Certified Applicator Records	150	158
RUP Dealer	100	123
Federal Facility	1	2
Export*	1	0
WPS Tier I	10	10
WPS Tier II	5	6
Ag Use Sample	10	20
Ag Follow Up Sample	50	181**
Non-Ag Sample	8	11
Non-Ag Follow Up Sample	10	33**
Chemigation	20	20
Marketplace	100	185

\*Experimental use and export inspections are conducted when the Department receives referrals from EPA.

\*\*Includes a mixture of physical and documentary samples.

#### **E. School Integrated Pest Management (IPM) Project**

- NDDA staff met with approximately 20 custodians from Dickinson Public Schools in February 2010 to brief them on IPM in Schools program, storage, and other pesticide issues in an effort to improve communication and urge them to undertake an IPM pilot.
- NDDA staff met with administrators of Jamestown Public Schools in July of 2010 to brief them on the IPM in Schools program in hopes of getting them to undertake an IPM in Schools pilot.
- In late FY 10, correspondence was sent out to over 674 administrators of elementary, middle, and high schools in North Dakota educating them on the IPM in Schools program and providing resources where they can obtain more information. The letter also asked principals to volunteer to undertake IPM pilot programs.

## **F. Healthcare Initiative**

- NDDA continues to provide copies of the publication, *Recognition and Management of Pesticide Poisonings* to clinics, emergency rooms, and other healthcare facilities in North Dakota in an effort to help medical providers better recognize symptoms of pesticide toxicity. A link to this publication is also available on the ND Department of Agriculture homepage.
- Due to staffing and workload constraints, the NDDA had limited time to devote to the Healthcare Initiative in FY 10.

## **G. Information on Pesticide Registration and Other Pesticide Programs**

- The NDDA continues to review pesticide labeling as part of its pesticide registration program. Issues concerning unenforceable label language are communicated to the registrant and appropriate EPA staff. Over 10,500 pesticides are registered in North Dakota.
- NDDA staff members are active on several regional and national pesticide workgroups and issues. Jim Gray is chair of the State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations and Management (POM), a group of eleven state regulators that works with EPA on pesticide labeling, enforcement, and certification issues. The SFIREG POM has been actively working with EPA on improving pesticide label language and other specific labeling.

Together with Andrew Thostenson at NDSU and EPA Registration Division Director Lois Rossi, Gray hosted a label training day with over 70 EPA staff members at EPA offices in Crystal City, VA. The purpose of the training was to identify and discuss unenforceable and vague pesticide label language as part of an ongoing effort to improve pesticide labeling. Due the success of the label training day, a similar training session will be conducted in the near future to include pesticide registrants.

Gray is also actively working with EPA on web-distributed pesticide labeling, serving as the SFIREG representative on EPA's web-distributed labeling workgroup. Participation on the EPA web-distribute labeling workgroup has required participation on two-hour conference calls twice per month. It is hoped that web distribution of labels will result in more user-friendly labels, improved compliance, and improved mitigation of risk of pesticide use to human health and the environment.

Jessica Johnson from the NDDA is a member of the SFIREG Environmental Quality Issues (EQI) Working Committee. This group works with EPA/OPP on a variety of pesticide issues, such as establishing aquatic life benchmarks,

evaluating screens for endocrine disruptors, pesticide contamination of groundwater and surface water, and pesticide disposal.

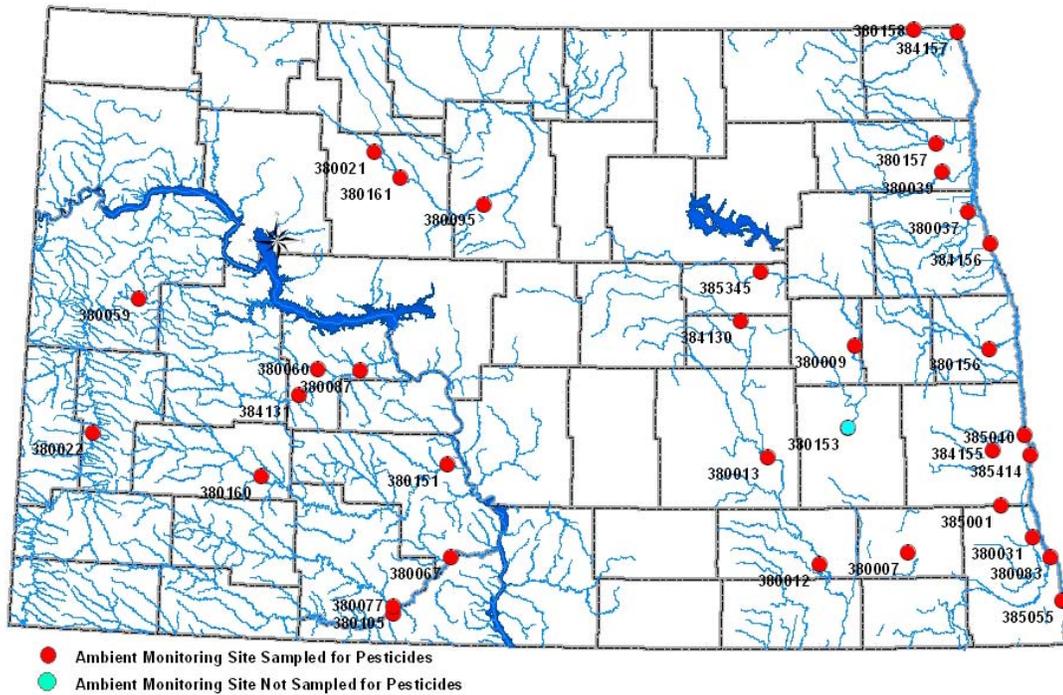
Gray was one of seven state pesticide regulators that served on an EPA workgroup to draft and develop EPA's general NPDES permit for aquatic pesticides. It is hoped that state participation in the process will result in a permit that meets the needs of regulators, pesticide users, and concerned citizens.

- The NDDA distributed hundreds of informational brochures to the public during trade shows, private and commercial certification sessions, public outreach meetings, and other settings. Brochures covered a variety of pesticide regulatory topics, including record-keeping, pesticide storage, proper use of personal protective equipment, fumigant management plans, and other topics.
- The NDDA participated in two North Dakota field tours in FY 10 with EPA staff members to cross-train and identify regulatory issues.

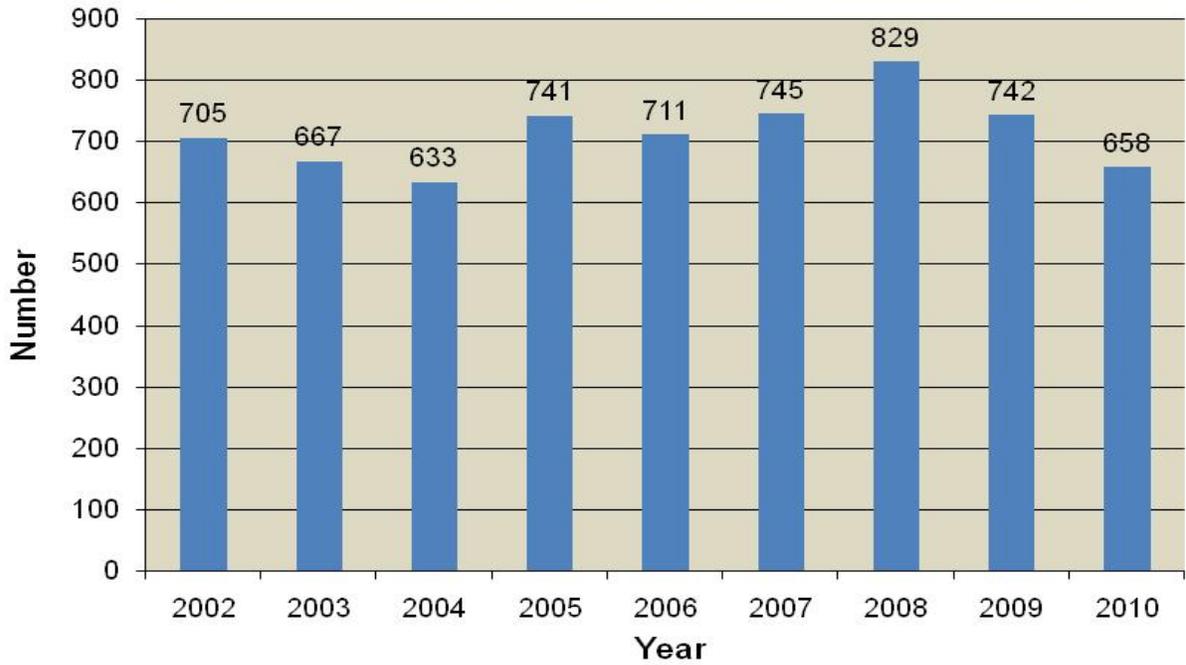
The first tour, conducted in concert with the ND Grain Growers Association, took place in June of 2010 and included several EPA staff members from OPP in Crystal City, VA. The tour focused on challenges involved with using agricultural pesticides in ND. The first half of the tour focused on pesticide use limitations near surface water and difficulties in complying with and enforcing boiler-plate surface water use restrictions in prairie pothole country. The second half of the tour focused on pesticide drift and how technology can be utilized to reduce drift.

The second tour, conducted jointly with our tribal pesticide partners at Standing Rock Sioux Tribe, was focused on prairie dog management and use of rodenticides. EPA staff from headquarters and EPA Region 8 toured prairie dog towns on Standing Rock reservation. An open forum with ranchers, state and tribal wildlife officials, and pesticide regulators was facilitated in an effort to educate participants on the impact that prairie dogs have on rangeland, how prairie dogs are managed, ecological concerns with registered rodenticides, and pesticide enforcement issues.

Figure 1. North Dakota ambient river and stream pesticide monitoring sites in 2010.



**Figure 2. NDDA Total Pesticide Inspections, 2002-2010**



**Figure 3. NDDA Pesticide Enforcement Actions, 2002-2010**

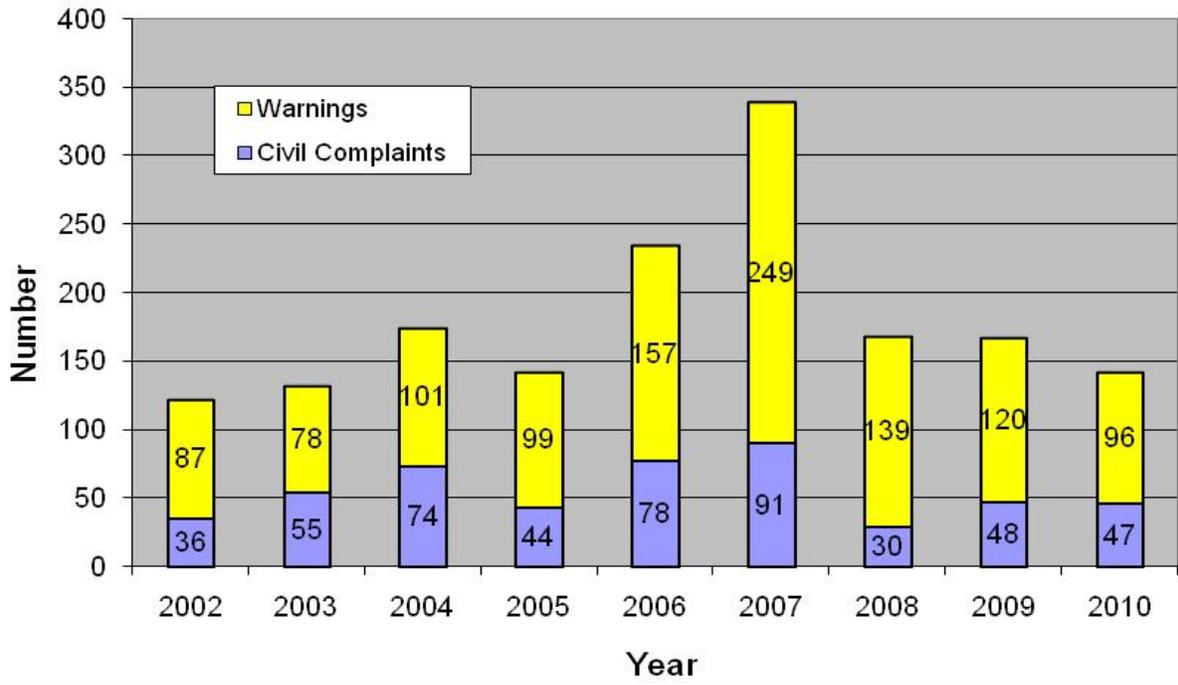
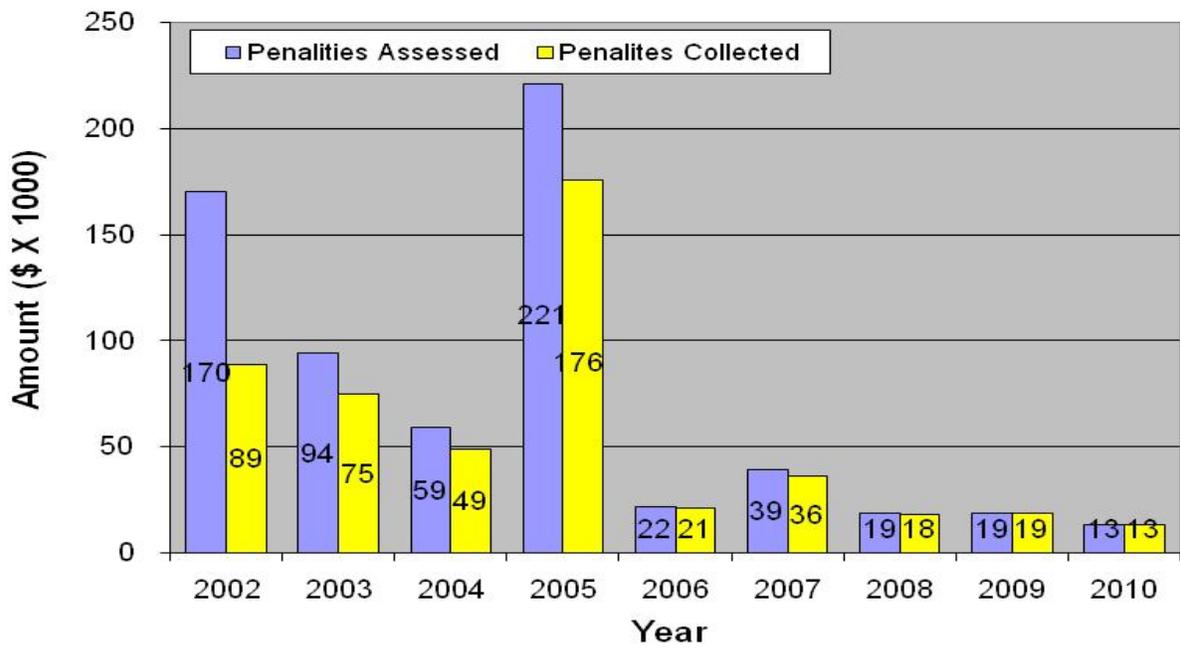


Figure 4. NDDA Pesticide Civil Penalties, 2002-2010





## Pesticide Enforcement Outcome Measure Reporting Form

Grantee \_\_\_\_\_

Fiscal Year \_\_\_\_\_

### Measure No. 1 - Repeat Violator

A. Total # of Regulated Entities Receiving Enforcement Actions	B. Total # of Entities Receiving Subsequent Enforcement Actions (i.e. subset of column A)	C. Repeat Violator Measure—B/A

### Measure No. 2 - Complying Actions

D. Total # of Enforcement Actions Resulting in Verified Compliance: \_\_\_\_\_

E. Total # of Enforcement Actions (from form 5700-33H): \_\_\_\_\_

F. Complying Actions Measure—D/F: \_\_\_\_\_

### Measure No. 3 - Efficiency

G. Grantee Pesticide Enforcement Funding: \$ \_\_\_\_\_

H. EPA Pesticide Enforcement Funding: \$ \_\_\_\_\_

Base Enforcement \_\_\_\_\_

Worker Protection \_\_\_\_\_

Enforcement Discretionary \_\_\_\_\_

Lab Equipment \_\_\_\_\_

I. Efficiency Measure—(G+H)/E: \_\_\_\_\_