



NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

Pesticide Enforcement Complaint Response Policy

Issue: Investigating pesticide misuse complaints requires a considerable amount of Department time and resources. In recent years the Department has been facing record numbers of investigations that have maxed out current resources. The purpose of this policy is to give the North Dakota Department of Agriculture (Department) discretion to not investigate certain complaints, while ensuring that the Department is obligated to respond to those complaints that have merit or involve a high risk of adverse effects to human health or the environment.

Background: The Department on average receives approximately 70 pesticide complaints each year that allege misuse, improper storage, or illegal disposal of pesticides, among others, however in recent years we have seen over 100 cases a year. Due to the need to conduct interviews, gather evidence, obtain pesticide use information, and gather soil and plant samples when needed, investigating these complaints requires a significant allocation of time and resources. Furthermore, it requires a reallocation of Department staff and resources from proactive activities such as public outreach and compliance assistance, to the reactive activities involved with complaint investigations.

Many of the complaints that are received each year are received weeks or months after an alleged pesticide violation, making it very difficult for staff to gather the necessary information to prove whether or not the complaint is valid and if an illegal act occurred. In addition, some complaints involve minor damages or activities that pose minor risk of adverse effects to human health or the environment, and Department staff could likely be better utilized regulating activities that pose a greater risk.

Some states are obligated by statute to respond to all pesticide complaints, while others have developed policies to give the state lead pesticide agency discretion to not respond to all complaints (see attachment). The North Dakota Century Code gives the ND Agriculture Commissioner authority to regulate pesticide sales, distribution, use, and disposal, but it does not require the Department to respond to all pesticide complaints.

If in doubt, the Department will initiate a follow-up investigation in response to a complaint. All decisions to not initiate a follow-up investigation will be cleared by the pesticide enforcement supervisor.

Pesticide complaint response policy:

1. Any person alleging violations of North Dakota Pesticide Act must submit the allegation in writing, by phone or provide a signed written statement before the Department will proceed with an investigation. As an exception to this rule, the Department will initiate a follow-up investigation of all complaints or allegations of misuse that involve human endangerment from pesticides, regardless of whether the report is received in writing.

2. All complaints will be assigned a unique identifier for tracking purposes.
3. The Department reserves the right to not initiate a follow-up investigation in response to a complaint if any of the following criteria are met:
 - A. The allegation or request for an investigation is received more than 28 days after the complainant knew of the alleged off-target pesticide application or misuse;
 - B. The complainant is not directly involved with the matter in question;
 - C. The Department determines that the risk of adverse effects from the alleged illegal activities to be low; or
 - D. The Department deems the allegations to be unwarranted.

The Department will assess risk per subsection "C" based on the toxicity of the pesticide and degree of exposure. We will also consider the physical properties and environmental fate of the pesticide to assess risk of off-target movement.

Complaints will be deemed to be unwarranted per subsection "D" if there is no indication that a practice in question is under the Department's jurisdiction, that we will be unable to document a violation or gather sufficient evidence, or the complainant expects unobtainable actions or results.

4. The Department will respond to and acknowledge all complaints of alleged pesticide misuse. Telephone calls will be returned within one business day from when they were received. If the Department initiates a follow-up investigation, the staff conducting the follow-up investigation will contact the complainant as soon as possible to schedule a time to meet and discuss the issue. If the Department deems that a complaint does not warrant a follow-up investigation, the Department will respond to the complainant in writing to inform them why we arrived at that decision.
5. At the conclusion of an investigation, the Department will send the complainant a letter summarizing the results of the investigation.
6. Threatening and abusive behavior towards Department staff will not be tolerated. The Department reserves the right to cease an investigation if at any time the inspector(s) investigating the complaint feels threatened in any way by the complainant or other involved parties.


Division Director

6-5-2019
Date

Developing a Pesticide Enforcement Complaint Response Policy: A Comparison of Other States

Arizona

State law requires the Department to respond to all pesticide complaints. Law also requires a complaint to be submitted in writing, although there are exemptions under certain situations.

Indiana

As a rule, Office of the Indiana State Chemist responds to all complaints, although they can use discretion to not respond.

Minnesota

Law requires a person to submit a written and signed request for an inspection. The Department will make a special inspection as soon as possible if it “reasonably believes” that a violation has occurred. An investigation number is assigned for tracking purposes.

If the Department determines that there are no reasonable grounds to believe that a violation has not occurred, the Department must notify the person making the request in writing of the determination.

Nebraska

Law requires person claiming damages from pesticide use to file a report within writing “as soon as possible” following the day of the alleged occurrence.

Department shall investigate report if it has “reasonable cause” to believe a violation has occurred. Department not required to respond if:

- A. Complaint made more than 90 days after complainant knew of damages,
- B. It is outside the scope of the Pesticide Act,
- C. It is frivolous, or
- D. It is minor.

South Dakota

State law requires the Department to respond to all complaints filed within 30 days or when there is at least $\frac{1}{4}$ section of standing crop. Department has discretion beyond that.

Wisconsin

State law requires Department to respond to all complaints.