



**NORTH DAKOTA  
DEPARTMENT OF AGRICULTURE**

STATE CAPITOL  
600 E. BOULEVARD AVE. – DEPT. 602  
BISMARCK, ND 58505-0020

**Minutes from the October 13, 2009 Meeting of the  
Pesticide Control Board**

The Pesticide Control Board convened on October 13, 2009. Agriculture Commissioner Goehring called the meeting to order at 8:00 am.

Commissioner Goehring participated from the ND Department of Agriculture (NDDA) offices in Bismarck, along NDDA employees Jim Gray, Angela Keller, and Dave Phillips. The two other Board members, NDSU Extension Director Duane Hauck and ND Experiment Station Director Ken Grafton, participated from Fargo via videoconference. Other persons present at the Fargo location included Andrew Thostenson, Julie Anderson, and Jayne Aukland from the NDSU Pesticide Training and Certification Program.

**Approval of Minutes**

Goehring moved to accept the minutes from the Board's last meeting on December 19, 2008. Seconded by Hauck. Motion carried.

**Recap of 2009 Legislative Session**

Jim Gray provided a summary of brief summary of changes made to N.D.C.C. 4-35 during the 2009 legislative assembly under SB 2248 and provided a copy of the document, "2009 Legislative Actions Affecting Pesticides". Most of the changes to N.D.C.C 4-35 were editorial in nature and intend to improve readability. Some of the substantive changes approved by the legislature include:

- A. Allowing dealers to sell Restricted Use Pesticides (RUPs) to persons not certified in ND as long as that person is certified in another state.
- B. Eliminating the "county of residence" provision for private certification, allowing persons to obtain private certifications anywhere in the state.
- C. Clarifying that pesticide sales and application records gathered by NDDA during its regulatory functions are closed records.
- D. Clarifying that wholesale transactions of RUPs are exempt from recordkeeping requirements.
- E. Adding language making it illegal to apply a pesticide to the property of another without the permission of the owner or lease, unless the application is made under the direction of a government entity.

Gray also discussed new resources added to the NDDA pesticide program by the 2009 legislature. First, the legislature added a pesticide outreach specialist to the NDDA to perform non-regulatory outreach to pesticide dealers and users on how to comply with state and federal requirements. Second, the legislature added a state-funded position to the NDDA to help absorb routine workload associated with pesticide registrations and the fertilizer program. Last, the

legislature provided 100 percent funding for one of our existing field inspector positions, allowing NDDA to fill a long-standing vacancy.

### **Pesticide Enforcement Summary**

Dave Phillips provided a summary of pesticide enforcement activities and issues from 2009. NDDA conducted 725 inspections and noted 205 violations. Of those 205 violations, 157 entities received a warning and 48 received a civil penalty. There were 21 civil penalties issued for illegal sales and recordkeeping violations from RUP dealer inspections. There were 20 civil penalties associated with agricultural use complaints, most commonly involving drift. Civil penalties totaled \$19,000.

Notable high risk incidents or areas of concern included:

- A. Pesticide use in housing complexes by uncertified applicators
- B. Post-application pesticide movement from right-of-way applications
- C. Human exposure following aerial application of fungicides and insecticides
- D. Human exposure from misuse of grain fumigants

Phillips also discussed pesticide regulatory program challenges, including staff vacancies, implementation of new pesticide enforcement software, and budget constraints.

### **Pesticide Certification Update**

Andrew Thostenson provided an update on the pesticide certification program and distributed several handouts. Private certification numbers continue to decrease in ND, decreasing from 13,118 in 2008 to 12,655 in 2009. For reference, there were 16,881 privately certified applicators in 1998. In contrast, there is an increase in the number of commercial applicators, increasing from 13,118 in 2008 to 8,107 in 2009. For reference, there were only 4,265 commercial applicators in 1998. Thostenson also noted the decreasing number of persons certified in the fumigation category. There were 523 persons certified in the fumigation category in 2009, while there were 576 in 2008. For reference, there were 723 persons certified in the fumigation category in 1998.

### **Response from EPA on Adequacy of ND Container/Containment Rules**

Gray provided a letter from U.S. EPA to the NDDA dated August 13, 2009. This letter discussed EPA's 2006 final regulations relating to bulk pesticide containers and containment. In 2007, the NDDA had contacted EPA and requested authority to continue implementing its state containment regulations in lieu of the federal regulations. In addition, one of the changes to N.D.C.C. 4-35 made in 2009 was to provide authority for NDDA to request repackaging records to meet the needs of the federal regulation.

In its response letter, EPA deemed North Dakota's containment regulations to be adequate. However, EPA also provided a list of suggested changes to North Dakota's administrative rules if and when we undertake rule-making. These suggestions were included as Attachment 1 to EPA's letter, and included such things as adding a requirement to protect appurtenances, more clearly defining regulated facilities and containers, prohibiting appurtenances through the base or walls of containment units, requiring maintenance on containment units and pads, and adding recordkeeping requirements for inspection and maintenance of repackaging facilities.

### **Discussion on Pesticide Rule-Making**

The Board discussed a plan for pesticide rule-making, not only to meet the needs of the federal container and containment regulation, but to also address other shortfalls and issues. Thostenson reminded Board members of the need to add certification deferment language for persons in active military duty. Philips also raised the issue of the Worker Protection Standard (WPS) language in the administrative rules and the fact that certain parts of the federal regulation are excluded via the state rules.

It was suggested that proposed changes to the administrative rules be discussed with stakeholder groups such as the ND Agriculture Association, the ND Weed Control Association, agricultural and non-agricultural pesticide dealers and users, mosquito control officials, and others. Any changes to the container and containment rules need to be clearly laid out to the pesticide industry for feedback.

NDDA was directed to work with NDSU Extension to draft proposed changes to the rules, discuss them with stakeholders, and report back to the Board with key findings. Based on those findings, the Board will decide whether or not to begin the rule-making process.

### **Looking Ahead to 2011 Legislative Session**

Gray raised concerns with the NDDA's high reliance on federal funds and the possibility that federal funds could run short of expenses. He stated the need for more state funds to create more budget stability. Extension will know more by mid-December what they will need for funding. Extension is just beginning to discuss areas of focus for the 2011 session. Thostenson stated that they may need to look at fee changes for certification training sessions, but this would not require a change to the law or rules. He also stated a potential need for late fees for commercial trainings. Phillips discussed the potential need to add a pesticide dealer licensing provision to the pesticide law.

Goehring moved to adjourn the meeting. Seconded by Hauck. Motion carried.