



Application of Pesticides to Waters of the U.S. in Compliance with FIFRA: Final Rule

November 2006 – A new rule issued by the Environmental Protection Agency (EPA) clarifies that a Clean Water Act (CWA) permit will not be required when application of a particular pesticide to, over or near waters of the U.S. is consistent with requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The rule identifies two specific circumstances where CWA permits are not required: the application of pesticides directly

to water to control pests; and the application of pesticides to control pests that are present over or near water, where a portion of the pesticides unavoidably will be deposited in the water to target the pests.

Background

In recent years, courts have been faced with the question of whether the Clean Water Act requires a National Pollutant Discharge Elimination System (NPDES) permit for pesticide applications (e.g., *Headwaters Inc. v. Talent Irrigation District*). As a result, public health authorities, natural resource managers and others who rely on pesticides have expressed to EPA their concern and confusion about whether they have a legal obligation to obtain an NPDES permit under the CWA when pesticides are applied to or over waters of the U.S.

On Aug. 13, 2003, the EPA published an interim statement presenting the agency's position on two circumstances in which pesticides applied to waters of the U.S. consistent with all relevant requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are not "pollutants" under the CWA, and thus do not require NPDES permits. On Feb. 1, 2005, the agency published a final interpretive statement and simultaneously published a proposed rule to incorporate the substance of the interpretive statement into EPA regulations. The EPA received comments from more than 700 stakeholders on the interim statement and proposed rulemaking. This final rule is

intended to clarify the applicability of the CWA to these pesticide applications.

What does the Final Rule say?

The application of a pesticide to waters of the U.S. consistent with all relevant requirements under FIFRA does not constitute the discharge of a pollutant that requires an NPDES permit in the following two circumstances:

1. The application of pesticides directly to waters of the U.S. to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds or other pests that are present in waters of the U.S.
2. The application of pesticides to control pests that are present over waters of the U.S., including near such waters, where a portion of the pesticides unavoidably will be deposited to waters of the U.S. to target the pests effectively; for example, when insecticides are applied aerially to a forest canopy where waters of the U.S. may be present below the canopy, or when pesticides are applied over or near water for control of adult mosquitoes or other pests.

Residuals of applications within the scope of the two circumstances described in the rule are pollutants. However, NPDES permits are not required for an application that may leave residuals. This is because the pesticide is not a pollutant at the time of discharge, and becomes a residual only after it has served its intended purpose.

In this issue . . .

Application of Pesticides to Waters of the U.S. in Compliance with FIFRA: Final Rule	1
Worker Protection Standard Streaming Video Program and Video Conference Workshop Scheduled for April	2
Coordinator's Comments	2
North Dakota Department of Agriculture 2005 Enforcement Actions	3
North Dakota Department of Agriculture 2006 Enforcement Actions	3
North Dakota Fall Section 18 Exemption and Pesticide Registration Meeting Summary	4
2007 Commercial Pesticide Certification Calendar	8
Winds of Change	10
Enviros in Green Lawsuits	10
EPA Publishes Regulation Establishing Standards for Pesticide Containers and Containment	12
The Alphabet Soup of Various Pesticide Labels: Section 2(e) Use Recommendation Fact Sheets	12
Certified Crop Adviser Continuing Education Units Available at Commercial Pesticide Applicator Trainings	13
North Dakota Department of Agriculture Complaint Summary 2006	14
Commercial Pesticide Certification Form	15

Worker Protection Standard Streaming Video Program and Video Conference Workshop Scheduled for April

The NDSU Pesticide Program and North Dakota Department of Agriculture are sponsoring a live, online Internet streaming video program on the Worker Protection Standard (WPS) on **April 4, 2007, from 10 a.m. to noon CST**. The streaming video program is targeted toward helping farmers and custom applicators who apply agricultural-use pesticides comply with the WPS regulation.

A more in-depth interactive video WPS workshop will be held **April 12, 2007, from 9:30 a.m. to 2:30 p.m. CST**. The workshop is targeted toward farmers and/or managers of businesses who custom apply agricultural-use pesticides. The video conferencing sites are:

- Bismarck –
NDSU Burleigh County Extension Office, 3715 Bismarck Expressway E.
- Grand Forks –
NDSU Grand Forks County Extension Office, 151 4th St. S., S302
- Minot –
NDSU North Central Research Extension Center, 5400 Highway 83 S.
- Devils Lake –
NDSU Ramsey County Extension Office, Courthouse, 524 4th Ave. N.E.
- Watford City –
NDSU McKenzie County Extension Office, Courthouse, 201 5th St. N.W.
- Fargo –
NDSU Cass County Extension Office, Courthouse Annex, 1010 2nd Ave. S., lower level
- Dickinson –
NDSU Dickinson Research Extension Center, 1133 State Ave.

The online Internet streaming video program and the workshop are not part of the certification program, but are educational opportunities designed to help participants be in compliance

with the WPS. The programs and workshop are offered without a registration fee. For more information,

call the NDSU Extension Pesticide Program at (701)231-7180. Or go to our Web page at: <http://ndsupesticide.org>.

Coordinator's Comments

I think even the most strident political partisans would agree that the recent federal election results will mean significant changes are likely in how our government is run, at least for the next couple of years. So, I asked a number of astute players and observers of the political process what this would mean in terms of laws, regulations and policy toward pesticides. Below is a compilation of their responses and mine:

- In the short run, six to nine months, expect very little change. In fact, everything will come to an almost grinding halt because the new party in power will want to just figure out what is going on and then try to formulate its own new solutions.
- Expect hearings on topics that have had very little consideration in recent years (such as pesticide harmonization between Canada and the U.S.) and expect new witnesses from folks who typically have not been invited to testify. This will include family farm, environmental, farm labor and consumer advocacy groups.
- Plan on Congress reviewing or investigating EPA (the executive branch) actions or inactions regarding the environment. This may result in the EPA becoming more anxious about phasing out pesticides, or it may result in a slowdown in pesticide registrations as it responds to Congress' concerns.
- Legislation that has not been given much thought in recent years likely will be brought up for consideration. This would include pesticide harmonization, integrated pest management in schools and

hazardous materials community right-to-know laws.

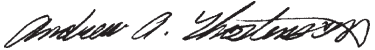
- Do not expect a radical overhaul of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). However, expect that new interpretations of FIFRA may become the basis for new policies and new regulations. This already has begun with the EPA's intention to rewrite the Certification and Training and the Worker Protection Standard regulations. The final regulation language may tend to favor consumers and workers at the expense of industry or employers.

For your edification, I thought you might be interested in getting a flavor of who will be exercising the reins of power in Congress, so I dug up a biography on the prospective chair of the EPA's oversight committee, and I found a press release from Earthjustice. The latter has a run-down on how it thinks the new Congress will respond to environmental advocacy interests.

Finally, the piece from CropLife was written before the election, but it does outline the strategy that Earthjustice has used to work through the courts to force the EPA to take certain actions. With the advent of the new Congress, Earthjustice likely will have an additional avenue to pursue its goals.

Like always, we'll try to keep you informed as best we can so you can adjust your actions accordingly.

Best regards,


Andrew A. Thostenson,
Pesticide Program Specialist

North Dakota Department of Agriculture 2005 Enforcement Actions

FIRST NAME	LAST NAME	FIRM	CITY	STATE	VIOLATION(S)	FINE PAID
DALE	ARENS	NORTHERN TIER SEED CO.	THOMPSON	ND	NO CERTIFICATION AND RECORDS VIOLATION	200
MARA	BERGEN	BERGEN'S DBA PLANT PER	BISMARCK	ND	NO CERTIFICATION	300
JOHN	BLAIR	BLAIRS FLYING SERVICE	ST THOMAS	ND	DRIFT ON SUNFLOWERS	200
JERRY	BORN	FARMERS UNION OIL OF S	FAIRMOUNT	ND	LABEL VIOLATION	600
DARCY	BRANDT	SELF-EMPLOYED	MOORHEAD	MN	LABEL VIOLATION	600
WILLIAM	CAMPBELL	TRI CAMPBELL FARMS	CAVALIER	ND	WPS VIOLATION AND NO PPE	1,500
DAN	CASHMAN	CASHMAN NURSERY	BISMARCK	ND	WPS VIOLATION AND RECORDS VIOLATION	200
CARTER	CHARLES	OLSEN AG AIR	CYRUS	MN	NO CERTIFICATION AND SUPPLIED FALSE INFORMATION	1,000
ERIC	CLEMENTICH	WILBUR ELLIS COMPANY	MINOT	ND	ILLEGAL DISPOSAL AND FAILURE TO REPORT SPILL	1,500
WILLIAM	HARDY	CAVALIER COUNTY WATER	LANGDON	ND	NO CERTIFICATION AND RECORDS VIOLATION	100
WAYNE	HAUGE	RBJ FARMS INC.	RAY	ND	OFF LABEL USE OF ARROW ON LENTILS	4,000
REGINAL	HERMAN	SELF-EMPLOYED	BRINSMADE	ND	LABEL VIOLATION	600
SHELDON	HOELSCHER	UNLIMITED LAWN SERVICE	SURREY	ND	NO CERTIFICATION AND RECORDS VIOLATION	200
WILLIAM	LANNERS	WILBUR ELLIS	MINOT	ND	ILLEGAL DISPOSAL	15,000
DANIEL	LARSEN	SELF-EMPLOYED	FORTUNA	ND	NO PPE	200
CRAIG	MEHLING	MEHLING SPRAYING SERVICE	FAIRVIEW	MT	NO CERTIFICATION AND RECORDS VIOLATION	1,500
CHARLOTTE	OST	KNIFE RIVER CREDIT UNION	HAZEN	ND	FALSE REPORT	750
DAVE	PECKSKAMP	SELF-EMPLOYED	FARGO	ND	NO CERTIFICATION	100
JASON	PLADSEN	GALESBURG ELEVATOR	GALESBURG	ND	ENVIRONMENTAL ENDAGERMENT AND RECORDS VIOLATION	1,000
RYAN	RADERMACHER	RADERMACHER FARMS	WHEATLAND	ND	WPS VIOLATION	1,250
HOWARD	RIEGER	SCOTT'S LAWN	BISMARCK	ND	DRIFT	300
NORMAN	ROSENDAHL	FESSENDEN CO-OP	ESMOND	ND	RECORDS VIOLATION	200
MIKEL	SCHOLLMEYER	SCHOLLMEYER SPRAYING	KILLDEER	ND	LABEL SPRAYED IN CONDITIONS FAVORING DRIFT	600
TERRANCE	THON	CROSBY COUNTRY CLUB	CROSBY	ND	INCOMPLETE RECORDS	100
JAMI	TJELDE	PROSAFE PEST CONTROL	WILLISTON	ND	LABEL VIOLATION	200
MIKE	VERVALEN	NORTHLAND YARD SERVICE	EAST GR. FORKS	MN	NO PPE AND LABEL VIOLATION	200
JOHN	VIGEN	JOHNSON'S PEST CONTROL	WEST FARGO	ND	DRIFT	300
ANDY	WILLIAMS	HEFTY SEED	ABERDEEN	SD	MIS-LABELING	36,800

North Dakota Department of Agriculture 2006 Enforcement Actions

FIRST NAME	LAST NAME	FIRM	CITY	STATE	VIOLATION(S)	FINE PAID
DAVE	ALLAN	HARLOW CO-OP ELEVATOR	MADDOCK	ND	BULK HANDLING VIOLATION	400
KEVIN	BACHMEIER	FUEL OIL CO	SHEYENNE	ND	STORAGE VIOLATION	100
RYAN	BARNICK	ALLIED AGRONOMY	JUD	ND	LABEL VIOLATION	200
JAMES	BERTILS	DAKOTA NORTHERN RAILROAD	CROOKSTON	MN	NO CERTIFICATION, NO SPILL KIT, NO FINANCIAL RESPONSIBILITY	400
JAMES	BERTILS	MINNESOTA NORTHERN RR	CROOKSTON	MN	NO CERTIFICATION AND NO FINANCIAL RESPONSIBILITY	400
DEL	EISNBARTH	SELF-EMPLOYED	NEW ENGLAND	ND	ILLEGAL PURCHASE	900
GREG	FITTERER	FITTERER OIL	NEW ENGLAND	ND	ILLEGAL SALES	1,200
LEONARD	GROSS	SPRING CREEK COLONY	FORBES	ND	RECORDS VIOLATION	200
PAUL	HAEGELE	SOUTH CENTRAL GRAIN CO	NAPOLEON	ND	ILLEGAL SALES	1,300
JASON	HANIG	UNITED AGRONOMY	WILLISTON	ND	OFF LABEL USE	7,500
CHRIS	HELGOE	SELF-EMPLOYED	CAVALIER	ND	WPS VIOLATION AND NO PPE	1,000
DENNIS	HORPESTAD	CHS	MILTON	ND	RECORDS VIOLATION	200
TERRY	HUFFMAN	COTEAU GRAIN	ELLENDALE	ND	NO CERTIFICATION, RECORDS VIOLATION, NO FUMIGATION PLAN	600
BRANDON	JALBERT	SELF-EMPLOYED	REEDER	ND	ILLEGAL PURCHASE	300
RAY	KLEINKNECHT	SELF-EMPLOYED	JAMESTOWN	ND	DRIFT	100
BOB	KUNTZ	BISMARCK STATE COLLEGE	BISMARCK	ND	NO CERTIFICATION	100
DONN	LEE	ECOLAB	GRAND FORKS	ND	ILLEGAL DISPOSAL	1,000
ROGER	LOURENS	LOURENS LAWN CARE	DEVILS LAKE	ND	RECORD, FINANCIAL RESPONSIBILITY, AND SPILL VIOLATION. NO CERTIFICATION	200
BRENT	LYSTE	FINELY FARMERS GRAIN	FINLEY	ND	RECORDS VIOLATION	200
BRAIN	MCNEAL	FARMERS UNION OIL	HAZELTON	ND	ILLEGAL SALES	600
BRAIN	MCNEAL	FARMERS UNION OIL	HAZELTON	ND	ILLEGAL SALES	600
THOMAS	MOLLER	MOLLER INC	RUGBY	ND	ILLEGAL SALES	200
ROD	SCHAEFFER	CITY OF NEW ENGLAND	NEW ENGLAND	ND	NO CERTIFICATION, IMPROPER STORAGE, RECORDS VIOLATION	200
BRAD	SCHAFFER	CITY OF MANDAN	MANDAN	ND	NO CERTIFICATION AND RECORDS VIOLATION	100
JAMES	SCHIERMEISTER	SELF-EMPLOYED	HAZELTON	ND	NO CERTIFICATION AND ILLEGAL PURCHASE	300
MIKE	SEVERSON	HOPE FARMERS ELEVATOR	HOPE	ND	RECORDS VIOLATION	200
PAUL	SKADBERG	SELF-EMPLOYED	CARRINGTON	ND	DRIFT	600
JON	STANG	STANG FARMS	REGENT	ND	ILLEGAL PURCHASE	200
BRETT	TAHRAN	EVENSON AG SERVICE LLC	CROOKSTON	MN	NO CERTIFICATION, NO DECONTAMINATION KIT, PESTICIDE SPILL, AND LABEL VIOLATION	500
TIM	TUCHSCHERER	MOLLER INC	YORK	ND	ILLEGAL SALES	200
RICHARD	WEILER	WALCO INTERNATIONAL	DICKINSON	ND	NONREGISTERED PESTICIDES	350
GREG	WINTERQUIST	SELF-EMPLOYED	GRANDIN	ND	LABEL VIOLATION	600

North Dakota Fall Section 18 Exemption and Pesticide Registration Meeting Summary

The seventh annual North Dakota fall Section 18 exemption and pesticide registration meeting was held in Bismarck, N.D., on Nov. 1, 2006.

Approximately 35 individuals, including North Dakota Department of Agriculture (NDDA) staff, growers and grower representatives, pesticide manufacturers, NDSU Extension Service personnel and staff from partner state agencies, were in attendance. Staff from the U.S. Environmental Protection Agency (EPA) also participated by conference call.

Opening Remarks

North Dakota Agriculture Commissioner Roger Johnson welcomed meeting participants and provided opening comments. Johnson stressed the importance of convening a group of growers, Extension personnel, pesticide manufacturers, NDDA staff and other stakeholders from time to time to discuss pesticide and pest management issues. He also stressed the importance of planning Section 18 requests well in advance.

NDDA Pesticide Registration Coordinator Jim Gray outlined the purpose of the meeting, which was to: A) discuss the Section 18 exemptions from the 2006 growing season, including discussions of product performance and the effectiveness of each exemption in controlling the target emergency pest problem, B) identify new or emerging pest problems in North Dakota or the region that may require a Section 18 exemption for the following growing season, C) prioritize and plan Section 18 exemption requests for the 2007 growing season, and D) discuss and update meeting participants on recent and pending pesticide registration actions with a potential impact on North Dakota agriculture. Opening remarks were concluded by having participants introduce themselves.

New Section 18 Rule

Gray discussed recent federal rulemaking that revised several elements of the federal Section 18 exemption program. He stressed that these changes could have significant impacts on how states submit exemption requests.

The first change to the Section 18 program involves a program in which states can “recertify” emergencies for certain repeat Section 18 exemption requests. The intent of the recertification program is to streamline the process and reduce state workload for repeat exemption requests. Under the recertification program, the EPA will provide each state with a list of exemptions eligible for recertification in the subsequent year. States then simply will have to provide a letter to the EPA verifying that the emergency pest situation continues to exist, the unregistered use patterns continue to be unchanged and no previously submitted information has changed. Gray stressed that the EPA will not grant recertified exemption requests automatically, and the EPA will review a recertified request just as it does any request. However, the EPA largely will be reviewing the data submitted in the previous year’s request. Furthermore, EPA has the final decision on eligibility under the program and can request additional data if it is needed.

The second change created by the new Section 18 rule involves the creation of a tiered system for demonstrating significant economic loss. Gray explained that proving significant economic loss is normally the argument used for the “urgent” part of the emergency. In the past, proving “significance” was always a subjective activity, and the new tiers are intended to make things more objective. Gray explained that states applying for Section 18 exemptions would start

at the lowest tier (Tier 1) and would not need to supply data for subsequent tiers if they could meet the threshold for significant economic loss under Tier 1. However, if states could not meet the threshold for Tier 1, they would need to proceed to Tier 2, and if they could not meet the criteria for Tier 2, they would need to proceed to Tier 3. If states cannot provide data to meet the criteria for any of the tiers, then a significant economic loss does not exist for the purposes of an emergency exemption.

The three thresholds for significant economic loss are as follows:

Tier 1: At least 20 percent yield loss

Tier 2: At least 20 percent loss in gross revenue

Tier 3: At least 50 percent loss of net operating revenue

Gray presented several scenarios to illustrate the tiered system and explained that the state would still need to provide data to prove that the other criteria for an emergency (e.g., a lack of alternative management tools and “nonroutine”) have been met.

Section 18 Exemptions and 24(c) Registrations From 2006

Sixteen Section 18 exemptions were available for use in North Dakota in 2006 (Table 1). These included a mixture of specific, quarantine and crisis exemptions. For reference, 17 emergency exemptions were active in the

Table 1. Summary of North Dakota Section 18 exemptions for the 2006 growing season.

Type of Section 18 Exemption	Number
Specific exemptions requested	9
Specific exemptions granted*	6
Quarantine exemptions	8
Crisis exemptions declared	1
Total Section 18 exemptions active in '05	16

* Three requests were withdrawn: fomesafen on dry beans, sethoxydim on buckwheat and azoxystrobin on safflowers.

2005 growing season. A listing of the specific exemptions requested for the 2006 season can be found in Table 2. In addition to the specific exemptions, several quarantine Section 18 exemptions were available (Table 3). These quarantine exemptions included a disinfectant to deactivate prions in diagnostic labs, along with several fungicide options for soybean and specialty legumes to manage Asian soybean rust. The lone crisis exemption declared in 2006 allowed use of Poast (sethoxydim) on buckwheat to manage wild oats. Section 18 exemption requests for use of several fungicides to control Asian soybean rust on specialty legumes also have been prepared. These requests are being reviewed by the U.S. Fish and Wildlife Service, North Dakota Department of Health, and North Dakota Game and Fish

Department, and will be submitted to the EPA in early December after the NDDA has reviewed input from these partner agencies.

In addition to the Section 18 exemptions, the department issued nine Section 24(c) Special Local Needs (SLN) registrations in 2006. Gray stated that Section 24(c) registrations frequently are issued, canceled or expire, and a listing of all North Dakota SLN registrations with supplemental labeling can be obtained online from the North Dakota pesticide registration database (www.kellysolutions.com/nd/).

NDDA Pesticide Issues From 2006

Gray led a discussion on the major pesticide-related issues affecting North Dakota in 2006, along with some issues that may affect the state in the future.

The first major issue discussed was the creation of performance measures for EPA's pesticide programs. Gray gave a history of the issue and discussed how the federal Office of Management and Budget (OMB) is evaluating all federal agencies through the PART (Performance Assessment and Rating Tool) process. OMB rated the EPA's pesticide enforcement program as "ineffective," forcing the EPA to develop performance measures to further assess the program. OMB rated programs from the EPA's Office of Pesticide Programs as "results not demonstrated," and the EPA has two years to submit performance measures for those programs.

Gray discussed the fact that the NDDA operates under partnership grants with the EPA, and because state pesticide laws are deemed equivalent or even more stringent than federal laws, the NDDA largely is enforcing FIFRA under state law. If the NDDA did not assume this role, the EPA would be forced to enforce federal law using its own employees. Pesticide programs in the department are funded through a mix of 85 percent federal funds and 15 percent state funds.

Gray presented the three performance measures that have been established for the EPA's pesticide enforcement program. These are: A) repeat violations (percentage of violations that are repeat violations), B) complying actions (percentage of violations in which compliance is subsequently verified), and C) efficiency (calculated by dividing the total funding by the number of violations). Gray explained that these measures likely will change how the department enforces pesticide laws. For instance, verbal warnings are not considered to be "violations," and NDDA staff likely will need to issue more written warnings or violations. Furthermore, the department may need to consider the use of higher penalties to reduce repeat violations. However, since the department is so dependent on EPA funds to operate, it has little choice but to begin tracking and

Table 2. Specific Section 18 exemption requests submitted by North Dakota for 2006 growing season.

Product	Active Ingredient(s)	Crop/Site	Target Pest(s)
Checkmite	Coumaphos	beehives	varroa mites, sm. hive beetles
Folicur, others	Tebuconazole	wheat	Fusarium head blight
Folicur, others	Tebuconazole	barley	Fusarium head blight
LSP, Mertect LSP	Thiabendazole	lentils	Ascochyta
Mustang Max	Zeta-cypermethrin	flax	grasshoppers
Poast ^b	Sethoxydim	buckwheat	wild oats
Quadris ^a	Azoxystrobin	safflowers	Alternaria
Reflex ^a	Fomasafen	dry beans	common ragweed
Spartan	Sulfentrazone	flax	kochia

^a Withdrawn due to EPA issuance of a full registration for this use.

^b Not acted on by end of use season.

Table 3. North Dakota quarantine Section 18 exemptions requested or available during 2006 growing season.

Product	Active Ingredient(s)	Crop/Site	Target Pest(s)
Environ LPH	Chlorophenols	diagnostic labs	prions
Bumper 41.8 EC	Propiconazole	soybeans	soybean rust
Domark 125 SL	Tetraconazole	soybeans	soybean rust
Folicur 3.6F	Tebuconazole	soybeans	soybean rust
Orius	Tebuconazole	soybeans	soybean rust
Headline	Pyraclostrobin	soybeans	soybean rust
Laredo EC	Myclobutanil	soybeans	soybean rust
Laredo EW	Myclobutanil	soybeans	soybean rust
PropiMax EC	Propiconazole	soybeans	soybean rust
Stratego	propiconazole + trifloxystrobin	soybeans	soybean rust
Tilt	Propiconazole	soybeans	soybean rust
Nova	Myclobutanil	spec. legumes	soybean rust
Rally	Myclobutanil	spec. legumes	soybean rust

reporting data for the performance measures.

Second, Gray discussed the EPA's Endangered Species Protection Program (ESPP) and explained that the EPA will use bulletins to add pesticide-use restrictions beyond those on the label to better protect threatened and endangered species. Unlike the voluntary county bulletins used in the past, the new bulletins will be enforceable. He indicated that the department will be conducting outreach to educate the public when the North Dakota bulletins become available.

Third, Gray discussed the problem of unenforceable pesticide label language. He cited example statements such as "Commercial Use Only" and "Professional Use Only" on general-use pesticide labels. The department has rejected more than 50 labels with these types of statements in the last year because the statements imply that the products are Restricted-use Pesticides (RUPs). Furthermore, such statements are unenforceable because terms such as "Professional Use" are not defined in state or federal statute. Gray stated that the department will continue to review labeling for such statements, and asked registrants to please review their labeling to ensure that all restrictions are enforceable.

Last, Gray gave an update on pesticide harmonization and North American Free Trade Agreement (NAFTA) pesticide labeling. He stated that a subteam was formed a year ago to work on the issue, and the team includes staff from the U.S. EPA, Canada's Pest Management Regulatory Agency, growers from the U.S. and Canada, registrants and pesticide retailers. He further stated that several NAFTA labels have been drafted, and growers may very well see some of these available in 2006. The goal is to have widespread use of NAFTA labels to allow U.S. growers to import and use lower-priced Canadian products, and vice versa.

Likely Pesticide Issues for 2006

Looking ahead, Gray informed participants that more performance measures likely will be established for other EPA pesticide programs. Gray also stated that the department once again will take a serious look at developing an integrated pesticide management (IPM) program for schools.

Product Performance Under 2006 Section 18 Exemptions

Participants were asked for feedback on the effectiveness of each Section 18 exemption from 2006 in controlling the target emergency pest(s). Comments generally were positive, suggesting that pesticide used under the exemptions were effective. Participants noted that sulfentrazone controlled kochia in flax, but had reduced efficacy in some areas due to the dry conditions. Coumaphos was effective in controlling small hive beetles, but efficacy against varroa mites was low due to widespread resistance. Zeta-cypermethrin use on flax was low because of the drought, but this use will be needed in 2007 due to a buildup of grasshopper populations.

EPA Briefing

Dan Rosenblatt (chief of the Risk Integration Minor Use and Emergency Response Branch) and T.J. Wyatt (Biological and Economic Analysis Division) participated via conference call. The majority of their time was used to clarify issues and answer questions on the new Section 18 rule. They stressed the need to provide sound data to expedite the review of the Section 18 requests, and thanked participants on the quality of exemption requests submitted by North Dakota.

New and Emerging Pests

Participants were asked to identify new and emerging pests in North Dakota. North Dakota could have new pests that have not been observed in the state, or nagging pest problems that recently have become more serious. Participants identified the following

as new and emerging pests in North Dakota:

- a. Rhizoctonia on sugar beets (Minor Use Fund proposal?)
- b. Prickly lettuce in pulse crops, mustard, safflowers and buckwheat
- c. False chamomile on many crops, especially in northern counties
- d. Canada thistle on sunflowers (need early season management tool)
- e. Long-horn beetle on sunflowera (Is Asana a management option?)
- f. Sunflower stem weevil (need a replacement for carbofuran)
- g. Varroa mites in beehives (resistance continues to develop to available tools)
- h. Fusarium head blight on cereals (need to get triazoles registered!)
- i. Kochia (continues to impact yields on crops statewide)
- j. Spring tails on sugar beets
- k. Insects on stored canola

Participants were urged to monitor each of these pest problems and let the department know as soon as possible if they reach levels warranting a Section 18 exemption.

Proposed Section 18 Exemptions for 2007

The floor was opened to allow commodity group representatives and NDSU Extension personnel to present their Section 18 "wish lists." Several Section 18 exemptions were proposed for North Dakota in 2007, many of which are repeat requests (Table 4).

A full registration should be available for the use of tebuconazole and/or prothioconazole on wheat and barley by the 2007 use season. These full registrations would negate the need for another Section 18 exemption request for tebuconazole.

Discussions on the proposed request for sethoxydim on buckwheat centered on the need to justify the emergency condition. The request from 2006 was based on abnormally wet conditions in June 2005 that prevented control of wild oats and other grasses. We will need to

Table 4. Section 18 exemptions proposed for the 2006 growing season in North Dakota.

Active Ingredient	Product	Crop	Target Pest(s)
Sethoxydim	Poast	buckwheat	wild oats
Linuron ^a	Lorox, others	pulse crops	prickly lettuce
Thiabendazole	LSP/Mertect 340-F	lentils	Ascochyta
Tribenuron ^a	Express	Express-tolerant sunflowers	Canada thistle
Fenpyroximate ^a	Hivastan	beehives	varroa mites
Coumaphos	Checkmite+	beehives	small hive beetles
Sulfentrazone	Spartan	flax	kochia
Sulfentrazone ^a	Spartan	safflowers	kochia
Thifensulfuron ^a	Harmony GT	safflowers	wild buckwheat
Zeta-cypermethrin	Mustang Max	flax	grasshoppers

^aNew request.

construct an argument that wild oats are a nonroutine problem in buckwheat, not simply an economic one.

Use of linuron on pulse crops was proposed to control prickly lettuce. Representatives from DuPont were asked to see if they had any efficacy data.

Another major topic for discussion concerned the management of varroa mites in beehives. Widespread resistance to coumaphos has made Checkmite+ relatively ineffective against varroa mites. Participants suggested that North Dakota request the use of fenpyroximate in beehives to control varroa mites. However, use of coumaphos still is needed to manage small hive beetles.

Pesticide Industry Updates

Arysta LifeScience: Everest will have a preplant and pre-emergence use label for 2007 for spring and winter wheat. Arysta completed its purchase of MicroFlo this year. Acquired products include Basagran (bentazon), Pyramin (chlordiazuron), Flo-met (fluometureon), Clethodim, Linuron, Everest (flucarbazone-sodium), Amicarbazone, Banvel (dicamba), Metsulfuron, Trifluralin, Acephate, Azinphos-methyl, Dimethoate, Malathion, Permethrin, Battlaion (deltamethrin), Belay (clothianidin), Bifenthrin, Chlorpyrifos, Shuttle (acequinocyl), Ipridione, Sulfur (Kumulus and several others), Tebuconazole, Evito (fluoxastobin), T-methyl (thiophanate-methyl) and Decree (fenhexamid).

BASF Corp.: BASF is expecting registration of Status (mix of dicamba, diflufenzopyr and isoxadifen) on corn in January 2007. Registrations also expected for use of Prowl H2O (pendimethalin) on wheat and alfalfa by the second quarter of 2007, use of Charter PB (triticonazole + thiram) on wheat and barley in fall 2006, and use of Alverde (metaflumizone) on potato by winter 2007. A full registration for the use of Poast (sethoxydim) on buckwheat is scheduled for review in March 2007, negating the need for another Section 18 exemption request for this use if a full registration is available by the use season.

Bayer CropScience: Bayer recently replaced its label for Baythroid 2E (cyfluthrin) with Baythroid XL (beta-cyfluthrin). A registration for Reason (fenamidone) as a seed treatment on sunflower is anticipated by fall 2007. A registration for Poncho Beta (clothianidin + beta-cyfluthrin) as a seed treatment on sugar beets is anticipated in fall 2008. A full registration for use of Folicur (tebuconazole) on cereals is anticipated the first quarter of 2007. A registration for use of Proline (prothioconazole) fungicide on cereals, canola and pulse crops is anticipated in late 2006. A registration for use of Prosaro (prothioconazole + tebuconazole) fungicide on cereals is anticipated shortly after the registrations are granted for Folicur and Proline. A registration of a broad-spectrum broadleaf herbicide (pyrsulfotole) for use in all cereals is anticipated in 2007.

A registration of a broad-spectrum herbicide (tembotrione) for use on corn is anticipated in 2007

DuPont: DuPont expects a registration for use of Express on sunflowers in early 2007. A registration is pending for use of Assure II (quizalofop) on sunflowers and flax.

FMC: FMC received a Section 24(c) in 2006 to allow use of Ranman 400SC on potatoes as an in-furrow or lay-by treatment. FMC has developed a new fungicide called Belief with a new mode of action. FMC will launch a new formulation of sulfentrazone called Authority First.

Syngenta: Syngenta Crop Protection has had several products obtain either a Section 3 label or label amendment during 2006. CruiserMaxx Beans seed treatment, a premix of thiamethoxam, mefenoxam and fludioxonil, is labeled in the legume vegetable group (dry beans, chickpeas, field peas, lentils, lupines, soybeans). CruiserMaxx Potatoes seed treatment, a premix of thiamethoxam, fludioxonil and a drying agent, has received a Section 3 label. CruiserMaxx Potatoes protects potatoes from certain chewing and sucking insects and seed- and soil-borne disease. Prefix Herbicide received a Section 3 label for use in soybeans. Prefix contains two active ingredients (S-metolachlor + fomesafen), in co-pack form, and is designed as a preplant or a pre-emerge application for soybeans (both conventional and glyphosate-tolerant). Quadris Fungicide has amended its Section 3 label to include control of downy mold and *Alternaria* leaf spot in oilseed crops, specifically crambe, flax, mustards, rapeseed, safflowers and sunflowers. Quadris Ridomil Gold Fungicide, a co-pack containing the active ingredients azoxystrobin and mefenoxam, received a Section 3 label for in-furrow use on potatoes.

2007 Commercial Pesticide Certification Calendar

Here are schedules you can use for planning your training needs in the next several months. Preregistration is required for all trainings. If you do not preregister, you have no guarantee you will get in the door. When you preregister, you will receive a \$10 discount. A training registration/home-study course material form is included in this issue of the *Pesticide Quarterly*. Preregistration forms must be postmarked 10 days prior to the training date to receive the discount.

Online preregistration also is available on the Web through our secure server. Electronic preregistration forms for downloading and printing are at www.ndsupesticide.org. Initial trainings are designed for new applicators or dealers needing to prepare to take certification exams. Recertification trainings are structured to give certified applicators the information necessary to maintain or renew their certificates.

Home-study course recertification is available for those categories that are not on the training calendar or for the following categories: greenhouse, home industrial and institutional, public health, vertebrate and wood preservation.

■ AgPest, Right-of-Way, Seed Treatment, Research and Demonstration

Date	Type	Time	Location
Feb. 1, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Minot, International Inn, 1505 Broadway N.
Feb. 13-14, 2007	Initial	2/13 – Registration 1 p.m.; Training 1:30 - 4 p.m.; 2/14 – Training 8:30 a.m. - 4 p.m.	Mandan, Seven Seas Hotel, 2611 Old Red Trail
<i>No exams during this training; schedule with your county Extension office</i>			
Feb. 15, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Mandan, Seven Seas Hotel, 2611 Old Red Trail
Feb. 27, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Crosby, Divide County Extension, 300 2nd Ave. N.
Feb. 27, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Fargo, Cass County Annex, 1010 2nd Ave. S.
Feb. 27, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Fessenden, Wells County Extension, 600 Railway St. N.
Feb. 27, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Linton, Emmons County Extension, 100 4th St. N.W.
Feb. 28-Mar. 1, 2007 NDAAA Convention, must attend both days	Aerial App. ONLY Recertification	TBA*	Fargo, Holiday Inn, 3803 13th Ave. S.W., I-29 and 13th Ave. S.
March 6, 200	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Devils Lake, Ramsey County Courthouse, 524 4th Ave. N.E.
March 6, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	LaMoure, LaMoure County Extension, 202 4th Ave. N.W.
March 6, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Mohall, Renville County Courthouse, 205 Main St. E.
March 6, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Watford City, McKenzie County Courthouse, 201 5th St. N.W.
Mar. 14-15, 2007	Initial	3/14 – 1 p.m. Registration Training 1:30 - 4 p.m.; 3/15 – Training 8:30 a.m. - 4 p.m.	Fargo, NDSU Memorial Union Ballroom
<i>No exams during this training; exams available March 16 or schedule with your county Extension office</i>			
March 16, 2007	Exam day	8 a.m. - 5 p.m.	Fargo, NDSU Loftsgard 380
March 20, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Grand Forks, Holiday Inn, 1210 43rd St. N., junction I-29 and U.S. Highway 2
March 30, 2007	Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Fargo, Ramada Plaza Suites, 1636 42nd St. S.W.

The following University of Minnesota recertification trainings also are available for **North Dakota commercial certified applicators in the ground, air, ag pest, and research and demonstration categories**. If you wish to attend these trainings, you must register with the U of M and pay its training fee, as well as pay your North Dakota certification fee.

- Jan. 23, 2007, Tuesday – Thief River Falls, Minn.
Northland Community and Technical College of
Continuing Education
1101 Highway 1 E., Thief River Falls, MN 56701
 - Jan. 24, 2007, Wednesday – Detroit Lakes, Minn.
Holiday Inn
1155 Highway 10 E., Detroit Lakes, MN 56501
- Registration begins: 7:30 a.m.
Program begins: 8:15 a.m.
Program adjourns: 3:30 p.m.

The early registration fee is \$109 if received by Jan. 5, 2007. The late registration fee is \$124. Certified crop adviser continuing education credits also are available for an additional \$20. You can register online at www.extension.umn.edu/pesticides/pat/2007recert.html

or you can contact
Oona Besse
College of Continuing Education
University of Minnesota, at (612) 624-3492 or
conferences3@cce.umn.edu.

■ Fumigation

Date	Type	Time	Location
Jan. 18, 2007	Initial, Recertification	Registration 9:30 a.m.; Training 10 a.m. - 2:30 p.m.	Fessenden, Wells County Extension, 600 Railway St. N.
Jan. 18, 2007	Initial, Recertification	Registration 9:30 a.m.; Training 10 a.m. - 2:30 p.m.	Grand Forks, Grand Forks County Extension, 151 4th St. S., S302
Jan. 18, 2007	Initial, Recertification	Registration 8:30 a.m.; Training 9 a.m. - 1:30 p.m.	Hettinger, Research Extension Center, Highway 12 East
Jan. 18, 2007	Initial, Recertification	Registration 9:30 a.m.; Training 10 a.m. - 2:30 p.m.	Williston, Research Extension Center, 14120 U.S. Highway 2
March 13, 2007	Initial, Recertification	Registration 9:30 a.m.; Training 10 a.m. - 2:30 p.m.	Fargo, NDSU Memorial Union Ballroom

■ Greenhouse, Ornamental and Turf

Date	Type	Time	Location
Jan. 31, 2007	Initial, Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Fargo, Ramada Plaza Suites, 1636 42nd St. S.W.
Feb. 6, 2007	Initial, Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Fargo, Doublewood Inn, 3333 13th Ave. S.W.
March 26, 2007	Initial, Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Bismarck, Burleigh County Extension, 3715 Bismarck Expressway E.
March 26, 2007	Initial, Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Devils Lake, Ramsey County Courthouse, 524 4th Ave. N.E.
March 26, 2007	Initial, Recertification	Registration 8 a.m.; Training 8:30 a.m. - 4 p.m.	Minot, Research Extension Center, 5400 U.S. Highway 83 S.

■ Public Health

Date	Type	Time	Location
April 25, 2007	Initial, Recertification	TBA*	West Fargo, Speedway Event Center, 680 Main Ave. W.
May 17, 2007	Initial, Recertification	Registration 9 a.m.; Training 9:30 a.m. - 4 p.m.	Bismarck, Burleigh County Extension, 3715 Bismarck Expressway E.
May 17, 2007	Initial, Recertification	Registration 9 a.m.; Training 9:30 a.m. - 4 p.m.	Devils Lake, Ramsey County Courthouse, 524 4th Ave. N.E.
May 17, 2007	Initial, Recertification	Registration 9 a.m.; Training 9:30 a.m. - 4 p.m.	Fargo, Cass County Courthouse Annex, 1010 2nd Ave. S., lower level
May 17, 2007	Initial, Recertification	Registration 9 a.m.; Training 9:30 a.m. - 4 p.m.	Grand Forks, County Extension, 151 4th St. S., S302
May 17, 2007	Initial, Recertification	Registration 9 a.m.; Training 9:30 a.m. - 4 p.m.	Minot, Research Extension Center, 5400 U.S. Highway 83 S.
May 17, 2007	Initial, Recertification	Registration 9 a.m.; Training 9:30 a.m. - 4 p.m.	Williston, Research Extension Center, 14120 U.S. Highway 2

■ Right of Way only

May 22, 200	NDWCA Annual Sprayer School	Recertification TBA*	TBA* western North Dakota
May 24, 2007	NDWCA Annual Sprayer School	Recertification TBA*	TBA* eastern North Dakota

*TBA – To be announced in a future issue of the *Pesticide Quarterly* newsletter.

**Need help with
pesticide certification or
general pesticide use issues?**

Contact:

NDSU Pesticide Training and
Certification Program
Box 5051, Fargo, ND 58105-5051

Tel: (701) 231-7180

Fax: (701) 231-5907

E-mail: pesticid@ndsuxext.nodak.edu

Internet: www.ndsupesticide.org

Winds of Change

By Cat Lazaroff, press secretary for policy and legislation, Earthjustice *

11/15/06 – What a week this has been, what a rare mood I'm in. ... Well, it's almost like winning an election!

While exit polls show that concerns about the economy, corruption and the war in Iraq drove the midterm election, there's no question that Tuesday's results leave supporters

Enviros in Green Lawsuits

By Douglas T. Nelson, executive vice president and general counsel for CropLife America

Aug. 7, 2006 – In recent years, the environmental activist community in the U.S. has developed and perfected a very productive tactic of suing the federal government and settling their claims for substantial attorneys' fees and litigation costs.

Nowhere has this been more successful than the recent settlement of the Washington Toxics Coalition vs. U.S. Environmental Protection Agency. This complaint, filed in January 2001 in Washington state, charged that EPA had not complied with provisions of the Endangered Species Act by failing to carry out consultations with U.S. Fish and Wildlife and the National Marine Fisheries services. Such consultations are triggered whenever a federal government entity like the EPA undertakes a "final action." In this case, the court found EPA had not fully consulted when registering certain pesticides and decided in favor of the plaintiffs.

Then, matters get interesting. After other legal issues were dispensed with, the WTC played their trump card... they filed for an award of the costs of litigation and attorneys' fees, in the amount of - get this - \$728,142.16. As an intervener in this case, I can attest that our legal fees for this action aren't anywhere close to this amount. Amazingly, the U.S. Department of Justice agreed to settle with WTC in the amount of \$625,602.40, roughly 86 percent of the amount claimed, well above the average award percentage.

The full amount of \$625,600 and change was sent by electronic transfer to Earthjustice, an environmental activist group based in Seattle. Obviously, these monies used to settle the claim came from the U.S. Treasury, provided from tax dollars from you and me. Of course, we had no voice in the award decision.

Is this cozy arrangement in which the activists are engaged – suing, settling and recovering costs and fees – in the best interests of our judicial system and ultimately our national budget? Where's the fairness in the seemingly endless cycle of lawsuits and awards that then fuel the litigation machine for the next lawsuit?

It is especially vexing since, in this case, no harm of an endangered species was even alleged because of the failure to consult, nor any species "saved" by this result.

Provisions in the Clean Water Act and Endangered Species Act for filing of citizen suits are designed to hold our government's feet to the fire on issues, and this policy certainly has merit. But exorbitant awards, as seen in the Washington Toxics case, lead readily to judicial abuse and encourage more and more litigation to clog our legal system. We need to apply greater equity in deciding award claims and avoid giving up extra points for a "Hail Mary" pass play.

* The above news release is from CropLife America. The NDSU Extension Pesticide Program does not endorse its views or actions. However, we are offering this for PQ readers in that this article does address a strategy that environmental advocacy groups are using to increase regulations on pesticides. You can read more about CropLife America at www.croplifeamerica.org.

of environmental protection in a better state than they've been for more than a decade. With both the House and Senate changing parties, we will now have pro-environment members as Senate majority leader and House speaker, as well as chairs of many of the House and Senate committees and subcommittees that deal with environmental issues. In addition, soon-to-be appointed Democratic committee chairs are expected to take seriously the check and balance role of Congress in examining, questioning and generally providing oversight for the policies under the current administration of the Environmental Protection Agency, Interior Department and the Forest Service. We can expect the 110th Congress to pay serious attention to the administration's attempts to roll back environmental safeguards, and guard against the going-out-of-business sale that we are apt to witness over the next two years.

Unfortunately, the election marks the departure of a number of moderate Republicans, who often battled their own leadership on environmental issues, which will likely make the Republican Caucus less friendly to the environment overall. This list includes Sen. Lincoln Chafee, who single-handedly held off Rep. Pombo's attempts to pass a virulently anti-ESA bill in the 109th Congress. Another environmental champion, Rep. Sherwood Boehlert (R-N.Y.), is retiring this year, while Rep. Jim Leach (R-Iowa), who has been a leader on clean water issues for 30 years, lost his seat when the Democrats swept Iowa's races. These Republican voices for environmental protections will be missed.

The biggest change we'll see in the 110th Congress is the new faces chairing important environmental committees. Under Republican rule, many of the most vital congressional committees were chaired by anti-environmental heavyweights. For instance, Rep. Richard Pombo (R-Calif.) made it his mission as chair of the powerful House Resources Committee to try to pass

legislation gutting the Endangered Species Act (ESA). Rep. Pombo succeeded in pushing his bill through the House, but luckily it was stopped in the Senate.

When Congress comes back in January, Rep. Pombo will be gone, a victim of his own anti-environmental policies, having lost to a wind-energy consultant, Jerry McNerney. Unlike most House races this year, Rep. Pombo's was primarily about the environment and his extreme approach to it.

In Pombo's place at the head of the House Resources Committee will be a longtime environmental champion, Rep. Nick J. Rahall (D-W.V.), who earned a 92 percent approval rating from the League of Conservation Voters (LCV) in this latest session of Congress. Rep. Rahall has already spoken out regarding his priorities as the new chairman of House Resources, pledging to protect "right-to-know" laws such as the National Environmental Policy Act (NEPA), promote natural resource conservation, end public land giveaways under the 1872 Mining Law and clean up abandoned coal mines. We can also expect the House Resources Committee to begin real oversight of the implementation and enforcement of environmental laws like the Endangered Species Act, with special attention to the abuse of science by agencies such as the Department of Interior.

Also tackling the undermining of credible science by the Bush administration will be Rep. Henry Waxman (D-Calif.), the new chair of the House Committee on Government Reform. Rep. Waxman introduced a bill this Congress aiming to end the politicization of science, and is likely to launch additional investigations into the Bush administration's misuse of science and undermining of federal safeguards for public health and the environment.

In the Senate, the chair of the Environment and Public Works Committee will move from Sen. James "global warming is a hoax"

Inhofe (R-Okla.) to environmental champion Sen. Barbara Boxer (D-Calif.). Under Sen. Boxer, there will be no more legislative attempts to gut NEPA or the ESA, and global warming will finally get the attention it deserves.

The Senate Energy and Natural Resources Committee will move from one New Mexican to another: from Sen. Pete Domenici (R-N.M.) to an ardent conservationist, Sen. Jeff Bingaman (D-N.M.). Under Sen. Bingaman, proposals to drill the Arctic National Wildlife Refuge will be off the table in favor of energy efficiency, biofuels and a national renewable energy portfolio. Sen. Bingaman earned a whopping 100 percent approval rating from LCV in the current Congress.

Back in the House, the House Energy and Commerce Committee will move from Rep. Joe Barton (R-Texas), the man who has pushed hardest to weaken clean air standards, to Rep. John Dingell (D-Mich.), one of the original authors of many of our landmark environmental laws including the Clean Air Act, Clean Water Act, NEPA and the ESA. With 50 years of experience in writing and defending environmental laws in Congress, Rep. Dingell will promote clean air, energy efficiency, and clean, safe energy production.

Protections for clean water will also find friendly chairs in the 110th Congress. The House Transportation and Infrastructure Committee will move from Don Young (R-Alaska) to Jim Oberstar (D-Minn.), the author and leading champion of a bill called the Clean Water Authority Restoration Act. This important piece of legislation, which gained 170 co-sponsors in the 109th Congress, would once again make clear Congress' intention to safeguard all waters of the United States.

The House Resources Subcommittee on Energy and Mineral Resources is currently in line to be chaired by Raul Grijalva (D-Ariz.), who earned a spectacular 100 percent score from LCV in the 109th Congress. Rep. Grijalva can be expected to push for

sensible energy solutions in lieu of the drill first, as questions later approach of his predecessor.

Finally, we can expect an end to the rubber-stamping of President Bush's worst nominees for lifetime seats on federal courts. The Senate Judiciary Committee, the first stop for these nominees, will now be chaired by Sen. Patrick Leahy (D-Vt.), a stalwart opponent of extreme judicial nominees. Dangerous ideas raised in the 109th Congress, including proposals to split the 9th Circuit Court of Appeals into two districts, and to end the ability of senators to filibuster controversial nominees, are now effectively dead.

The 110th Congress won't be all wine and roses. It will still be difficult to win some floor votes on environmental issues, particularly in the Senate where the Democrats will hold a razor-thin margin. In the House, a number of the incoming Democratic Congress members are socially conservative, which may make it difficult for Democrats to pass certain kinds of legislation.

But all in all, it's been a remarkable week, and a great victory for the environment. While the lame-duck Bush administration will continue to push environmental rollbacks through administrative rulemaking, the Democratic Congress will be vigilant in uncovering the real impact of such proposals. When Earthjustice uses the courts to challenge these rules, as we've done with such dramatic impact this year, our victories will not be overturned by congressional riders. The Bush administration no longer has anywhere to hide.

* The above news release is from Earthjustice. The NDSU Extension Pesticide Program does not endorse its views or actions, but its analysis of the election is nevertheless insightful and, I think, useful for pesticide users. Earthjustice, according to its own description is, "a nonprofit public interest law firm dedicated to protecting the magnificent places, natural resources and wildlife of this earth and to defending the right of all people to a healthy environment. We bring about far-reaching change by enforcing and strengthening environmental laws on behalf of hundreds of organizations and communities." You can read more about Earthjustice at its Web site, www.earthjustice.org

EPA Publishes Regulation Establishing Standards for Pesticide Containers and Containment

August 2006 – The EPA has published its final rule establishing standards for pesticide containers and containment. The rule was proposed on Feb. 11, 1994; a supplemental notice was published on Oct. 21, 1999; and the comment period was reopened on June 30, 2004. The rule establishes standards for refillable and nonrefillable containers, including design specifications for rinsing, durability and standardized closures. It requires pesticide labels to provide instructions on how to properly clean containers before disposal or recycling. The rule also establishes standards for secondary containment

structures at certain agricultural storage sites and for containment pads at certain agricultural pesticide dispensing operations.

The rule affects registrants, distributors, dealers, commercial applicators and custom blenders, but does not extend to containment at individual farms. The rule is intended to ensure that pesticide containers can be rinsed safely and effectively before recycling or disposal. It is intended to promote the safe refill and reuse of refillable containers, and to ensure that large quantities of agricultural pesticides

will be stored and transferred under conditions that prevent spills and releases of pesticides into the environment. A basic overview of what, who and when can be found in Table 1.

Additional information about the rule and who is affected by the rule is available on the Pesticide Container and Containment Web site at:

www.epa.gov/pesticides/regulating/containers.htm

The Web site includes electronic copies of the rule-related Federal Register notices and a summary of the major requirements of the final rule.

Questions may be directed to Nancy Fitz at (703) 305-7385 or fitz.nancy@epa.gov, or Jeanne Kasai at (703) 308-3240 or kasai.jeanne@epa.gov.

Table 1. Overview of the Pesticide Container and Containment Structure Regulations.

Category	Nonrefillable Containers	Refillable Containers	Repackaging Pesticide Products	Container Labeling	Containment Structures
Who Must Comply	<ul style="list-style-type: none"> • Registrants 	<ul style="list-style-type: none"> • Registrants • Refillers (retailers, distributors) 	<ul style="list-style-type: none"> • Registrants • Refillers (retailers, distributors) 	<ul style="list-style-type: none"> • Registrants • Pesticide users (must follow new directions) 	<ul style="list-style-type: none"> • Ag retailers • Ag commercial applicators • Ag custom blenders
Major Requirements	<ul style="list-style-type: none"> • DOT container design, construction and marking standards • Container-dispensing capability • Standard closures • Residue removal • Recordkeeping 	<ul style="list-style-type: none"> • DOT container design, construction and marking standards • Serial number marking • One-way valves or tamper-evident devices • Stationary container requirements 	<ul style="list-style-type: none"> • Registrants develop information • Registrants and refillers comply with specified conditions • Refillers obtain and follow registrant information, and clean, inspect and label containers before refilling them 	<ul style="list-style-type: none"> • Identify container as nonrefillable or refillable (<i>all</i>) • Statements to prohibit reuse and offer for recycling; batch code (<i>all nonrefillables</i>) • Cleaning instructions (<i>some nonrefillables</i>) • Cleaning instructions before final disposal (<i>all refillables</i>) 	<ul style="list-style-type: none"> • Secondary containment structures (dikes) around stationary tanks • Containment pads for pesticide-dispensing areas • Good operating procedures • Monthly inspections of tanks and structures • Recordkeeping • Provisions for states with existing programs
Compliance Date	Aug. 16, 2009 (within 3 years)	Aug. 16, 2011 (within 5 years)	Aug. 16, 2011 (within 5 years)	Aug. 16, 2009 (within 3 years)	Aug. 16, 2009 (within 3 years)

The Alphabet Soup of Various Pesticide Labels: Section 2(ee) Use Recommendation Fact Sheets

The following was adapted from the Washington State Department of Agriculture

The North Dakota Department of Agriculture (NDDA) does not require registration or approval of section 2(ee) use recommendations. Section 2(ee) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the North

Dakota Century Code allows pesticide users to apply pesticides under certain limited conditions that are not specified on a pesticide label. Written bulletins or recommendations are not required for applicators to make applications that are allowed under section 2(ee). Registrants sometimes issue section 2(ee) use recommendations for their

products in the form of written bulletins. These written bulletins are not labels nor are they required to be registered with NDDA. However, written bulletins are considered “labeling” and must be consistent with FIFRA requirements and the section 3 label.

continued on page 16

Certified Crop Adviser Continuing Education Units Available at Commercial Pesticide Applicator Trainings

The NDSU Extension Service Pesticide Program is offering certified crop advisers the opportunity to obtain their continuing education units (CEUs) at commercial pesticide training sessions.

Please note that you must attend 100 percent of the training to receive your CEU credits. No exceptions allowed!

Fees for attending a session are as follows:

- \$ 5 per credit for crop advisers who also are attending for commercial pesticide certification
- \$10 per credit for crop advisers who are attending for CEUs only

Please preregister 10 days before a training to ensure adequate space at each location.

Call the NDSU Extension Pesticide Program with any questions at (701) 231-7180.



Date	Times	Location	CEU Breakdown
Feb. 1, 2007 6 credits	Registration 8 a.m. Training 8:30 a.m. – 4 p.m.	Minot , International Inn 1505 Broadway N.	Soil and Water Management – 1.5 Pest Management – 4.5
Feb. 13-14, 2007 (<i>must attend both days</i>) 9 credits	Feb. 13: Registration 1 p.m. Training 1:30 – 4 p.m. Feb 14: Training 8:30 a.m. – 4 p.m.	Mandan , Seven Seas Hotel 2611 Old Red Trail	Soil and Water Management – 2.5 Pest Management – 6.5
Feb. 15, 2007 6 credits	Registration 8 a.m. Training 8:30 a.m. – 4 p.m.	Mandan , Seven Seas Hotel 2611 Old Red Trail	Soil and Water Management – 1.5 Pest Management – 4.5
Feb. 27, 2007 6 credits	Registration 8 a.m. Training 8:30 a.m. – 4 p.m.	Crosby , Divide County Extension, 300 2nd Ave. N. Fargo , Cass County Annex 1010 2nd Ave. S. Fessenden , Wells County Extension, 600 Railway St. N. Linton , Emmons County Extension, 100 4th St. N.W.	Soil and Water Management – 1.5 Pest Management – 4.5
March 6, 2007 6 credits	Registration 8 a.m. Training 8:30 a.m. – 4 p.m.	Devils Lake , Ramsey County Courthouse, 524 4th Ave. N.E. LaMoure , LaMoure County Extension, 202 4th Ave. N.W. Mohall , Renville County Courthouse, 205 Main St. E. Watford City , McKenzie County Courthouse, 201 5th St. N.W.	Soil and Water Management – 1.5 Pest Management – 4.5
Mar. 14-15, 2007 (<i>must attend both days</i>) 9 credits	March 14: Registration 1 p.m. Training 1:30 – 4 p.m. March 15: Training 8:30 a.m. – 4 p.m.	Fargo , NDSU Memorial Union Ballroom	Soil and Water Management – 2.5 Pest Management – 6.5
March 20, 2007 6 credits	Registration 8 a.m. Training 8:30 a.m. – 4 p.m.	Grand Forks , Holiday Inn 1210 43rd St. N., Jct. I-29 & U.S. Hwy 2	Soil and Water Management – 1.5 Pest Management – 4.5
March 30, 2007 6 credits	Registration 8 a.m. Training 8:30 a.m. – 4 p.m.	Fargo , Ramada Plaza Suites 1636 42nd St. S.W.	Soil and Water Management – 1.5 Pest Management – 4.5

Certified Crop Adviser – CEU Preregistration 2007

Include fee

(Please print)

Name _____

Phone _____

Address _____

City _____

State _____ Zip _____

I will attend the following workshop:

Date ___/___/___ City _____

Fee

Attending for CEUs only?

_____ credits

x 10

Total \$ _____

Attending for pesticide certification also?

_____ credits

x 5

Total \$ _____

Make checks payable to:
NDSU Extension Pesticide Program

(If paying by personal check,
the state of North Dakota requires
your birth date on the check.)

Return to:
NDSU Extension Pesticide Program
P.O. Box 5051
Fargo, ND 58105-5051

North Dakota Department of Agriculture Complaint Summary 2006

(A = Aerial G = Ground U = Unknown)

County	Complaint	Action Taken
Divide	Arrow on lentils – off label	G Three private applicators and one commercial applicator – \$25,000 fine
Cass	Glyphosate drift onto wheat	G Withdrawn
Eddy	Brox-M applied to wheat by commercial applicator – crop damage	G Pending
McIntosh	Glyphosate drift onto wheat	G No violation
Bottineau	Cardboard strips of insecticide found in bee hives during honey flow	G Pending
Stutsman	Spray drift onto trees – not certified	G Pending
Stutsman	Spray drift from neighbor when he was spraying lawn	G Pending
Ramsey	Spray drift into greenhouse and nursery	G Pending
Ward	Bronate drift into farmstead	G Pending
Bottineau	Grain elevator is pumping water onto farmland – allegedly contains pesticides	No violation could be documented – referred to county water board because it is a drainage problem
Burleigh	Neighbor spraying lawn – damaged flowers in complainant's yard	G Withdrawn
Rolette	Lake water appears aqua colored and is generating green foam on the water	G No violation – laboratory reported high amounts of algae
Golden Valley	Farmer doing custom work – not certified	G Violation - \$200 fine
Traill	Cornfield damaged by Upbeet	G Pending
Richland	Drift onto grapevines from applications within 1 mile	G Pending
Stark	Drove through farmer's spray drift – got sick from the spray	G Withdrawn
LaMoure	Commercial applicator got kegs mixed up while spraying – caused crop damage	G Applicator called in incident and settled claim – \$400 fine
Cavalier	Glyphosate drift onto wheat	A Withdrawn
Cass	Spray drift into yard – very windy	G Pending
Walsh	Drift onto soybeans	G Pending
Ward	Spray drift onto flax field	G Pending
Cass	Glyphosate drift onto wheat field	G Pending
Grand Forks	Drift into farmstead over several consecutive years	A Withdrawn
Mercer	Sprayers drifted into neighbor's farmstead	G Withdrawn
Barnes	Glyphosate drift onto barley and soybeans	G Still under investigation
Cass	Weed board sprayer drifted onto soybeans	G Pending
Stutsman	Yard damage due to 2, 4-D spray drift from neighbor	G Pending
Cass	Weed board sprayer drifted onto soybeans	G Pending
Stutsman	Sunflowers damaged by adjacent spray application onto a wheat field	G Herbicide carryover from previous crop – no violation
Rolette	Herbicide drift into farmstead trees	A Pending
McLean	Glyphosate drift onto wheat and barley	G Pending
Burleigh	Herbicide drift onto four field pea fields	A Pending
Rolette	Spray drift to alfalfa field	G Pending
Wells	Neighbor is mixing and loading ROW pesticides next door. He is a commercial applicator and leaves loads mixed overnight in yard – alleged damage to trees and flowers	G No violation could be documented
Cavalier	Liberty and Select drift onto sunflowers – extremely windy conditions	G Pending
Wells	Damage to trees from CRP application – applicator is aware of the situation, but has not called them	A Withdrawn after applicator contacted them
LaMoure	Commercial applicator spraying in very windy conditions.	G Still under investigation
Mercer	Drift into trees	G Pending
Ramsey	Weed board sprayer damaged corn	G No violation
Cass	Herbicide drift onto grape vines	G Pending
Stutsman	Trees growing along James River are dying, thinks it is pesticide related	U Still under investigation
Logan-LaMoure	Commercial applicator spraying in 30 mph winds	G Pending
Cass	Farmer spraying when migrant workers were working in the same field	G WPS violation – migrants left the area – will not return calls
Forth Berthold Reservation	Aerial applicator flying over Lake Sacagawea with spray booms on	A Pending
Williams	Commercial applicator spraying evergreens for disease that does not exist	G Pending
Pembina	Neighbor sprayed adjacent area – damaged garden and shrubs	G Pending
Emmons	Drift into farmstead by neighbors LV6 and Glyphosate application – tree damage	G Still under investigation
Benson	Aircraft flying over yard with dripping nozzles - complainants felt droplets on face and hands	A Pending
Walsh	Spray drift into farmyard	G Still under investigation



Commercial Pesticide Certification Form

Training Pre-Registration • Non-Training Study Materials

PERSONAL
Name _____
Address _____
Phone _____
Date of Birth _____
E-mail _____

EMPLOYER/BUSINESS
Name _____
Address _____
Phone _____
Fax _____
E-mail _____

Correspondence from the Pesticide Office should go to which of the above addresses? personal employer

N.D. County of Residence _____

N.D. Commercial Pesticide ID _____

Do you work for a Government agency? Yes No

Is this certification for research and demonstration purposes? Yes No

Check all that apply on each line: **Core Status** Ground Aerial
Certification Status Applicator Dealer Consultant

A. Training/Pre-Registration (if not attending a training, go to B) Study Materials are provided at training. Do not request material for training(s) indicated below.		
▼ Check each category you are training in:	▼ City	▼ Date
<input type="checkbox"/> Ag Pest		
<input type="checkbox"/> Right-of-Way		
<input type="checkbox"/> Seed Treatment		
<input type="checkbox"/> Fumigation		
<input type="checkbox"/> Greenhouse		
<input type="checkbox"/> Ornamental & Turf		
<input type="checkbox"/> Home, Industrial & Institutional		
<input type="checkbox"/> Public Health		
Total training/pre-registration categories _____ X \$10 = \$ _____ * Pre-registration discount _____ - \$10 Total of column A \$ _____ <i>go to B</i>		
Must be postmarked 10 days prior to training.		
<small>* One \$10 discount is allowed each training season. You may not receive a discount for each training attended</small>		

B. Study Material (NON-Training) (if not requesting study material, go to C)	
▼ Check each category for study material needed:	
<input type="checkbox"/> Ag Pest	
<input type="checkbox"/> Fumigation	
<input type="checkbox"/> Greenhouse	
<input type="checkbox"/> Home, Industrial & Institutional	
<input type="checkbox"/> Ornamental & Turf	
<input type="checkbox"/> Public Health	
<input type="checkbox"/> Right-of-Way	
<input type="checkbox"/> Seed Treatment	
<input type="checkbox"/> Vertebrate	
<input type="checkbox"/> Wood Preservatives	
Total study material categories _____ X \$10 = \$ _____ Shipping and handling _____ + \$5 Total of column B \$ _____ <i>go to C</i>	

Method of Payment (payment must be included)

Credit Card Visa MasterCard Discover

Credit card # _____ Expiration (mo/yr) ____/____

Cardholder name (print) _____

Check/Money Order # _____ Payable to NDSU Extension Pesticide Program
If paying by personal check, the State of North Dakota requires your birthdate on the check

Return: NDSU Extension Pesticide Program **-or-** register online at: www.ndsupesticide.org
 Box 5051 NDSU
 Fargo, ND 58105

C. Certification Fee	
Base fee	\$55
Total A	\$ _____
Total B	\$ _____
Grand total	\$ <input type="text"/>

For questions, contact the NDSU Extension Pesticide Program Office — phone 701/231-7180; fax 701/231-5907

The Alphabet Soup

continued from page 12

Section 2(ee) of FIFRA and the North Dakota Century Code or Administrative Rules allow that a pesticide may be:

- Applied at any dosage, concentration or frequency less than that specified on the label (unless the label specifically prohibits such an application)
- Applied against any target pest not specified on the label (unless the EPA has required that the pesticide may be used only for the specified pests)
- Applied by any method not prohibited by the label (unless the label specifically states the pesticide may be applied only by the methods specified on the label)
- Mixed with another pesticide or a fertilizer (if not prohibited by the label)

Please be aware that section 2(ee) use recommendations are subject to the following restrictions:

- The section 2(ee) use recommendation cannot add a crop/site, or expand an existing crop/site.
- The section 2(ee) use recommendation cannot increase the dosage, concentration or frequency of application.
- The section 2(ee) use recommendation cannot decrease the preharvest interval or the interval between applications.
- The section 2(ee) use recommendation cannot change the timing or type of application.
- The section 2(ee) use recommendation cannot add chemigation as a method of application.
- The section 2(ee) use recommendation cannot allow a lower dosage or concentration than specified on the label for preconstruction termiticide uses (refer to EPA PR Notice 96-7).

Pesticide applicators are not required to have a copy of the section 2(ee) use recommendation when making an application allowed under section 2(ee) of FIFRA and the North Dakota Century Code or Administrative Rules. Written bulletins may not include statements or requirements to the contrary.

The registrant is responsible for ensuring the recommended use is consistent with the section 3 label and is allowed under section 2(ee). Registrants should be aware that distribution of an incorrect section 2(ee) recommendation is an unlawful act that can result in compliance action.

For information on pesticide registration in North Dakota, contact the NDDA pesticide registration specialist, Jim Gray, at jgray@nd.gov or (701) 328-1505.

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