



Project Safe Send Nearly Sets Collection, Participation Records

BISMARCK – More than 100 tons of unusable pesticides – a near-record – were collected and transported out of North Dakota in 2009 through Project Safe Send.

“More than 500 people brought in a total of 205,021 pounds, compared to last year’s record of 215,521 pounds,” Agriculture Commissioner Doug Goehring said Friday. “These numbers clearly indicate a continuing need for Project Safe Send.”

The previous participation record was 535, also in 2008.

“Since 1992, almost 7,000 people have used Project Safe Send to get rid of their unusable pesticides, more than 2½ million pounds,” Goehring said. “This public support has helped maintain the program’s strong,

bipartisan backing in the Legislature.” (See table at right.)

Project Safe Send collections were conducted during July in Beulah, Bottineau, Casselton, Devils Lake, Dickinson, Drayton, Edgeley, Flasher, Grand Forks, Hillsboro, McClusky, Minot, Napoleon, Valley City, Williston and Wyndmere.

The Valley City collection drew the most participants – 54 people – and was second in the amount of chemicals collected – 30,838 pounds. Grand Forks was first in the amount of waste pesticides collected with 48,560 pounds and was second in participation with 52 people.

Long-banned products, such as DDT, arsenic, strychnine and mercury compounds, were among the chemicals brought in this year.

All the chemicals were collected, repackaged and transported to out-of-state incinerators by Veolia Environmental Services, Blaine, Minn.

Project Safe Send is funded with fees paid by pesticide manufacturers to register their products in North Dakota.

“As more pesticides become obsolete every year and are no longer usable for current applications, Project Safe Send remains an easy and affordable means for farmers, dealers and homeowners to get rid of these dangerous chemicals,” Goehring said.

Project Safe Send Collection History: 1992-2009

Year	Participants	Pounds Collected
1992	396	80,910
1994*	379	71,584
	229	60,254
1995	145	48,222
1996	341	94,389
1997*	120	84,000
	142	19,402
	222	63,917
1998	367	131,709
1999	321	158,938
2000	332	166,949
2001	369	147,857
2002	370	190,759
2003	460	155,158
2004	326	129,994
2005	458	172,791
2006	428	170,817
2007	478	186,496
2008	535	215,521
2009	501	205,021
TOTALS	6,919	2,554,688

* Multiple collection periods were conducted in 1994 and 1997.

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Need help with pesticide certification or general pesticide use issues?

Contact:

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Update on pesticide applications and the Clean Water Act

Editor's note: In the previous issue of Pesticide Quarterly (Volume 27, No. 2,) I noted that the EPA's interpretation of pesticide applications to water bodies was overturned in January 2009 by the 6th U.S. Circuit Court of Appeals. In April, June and August, the court ruled again. The following summary was compiled by Phil Nixon, pesticide coordinator for the University of Illinois Extension Service. It outlines the issue and discusses the recent rulings along with potential impacts for pesticide applicators.

During the past several years, there has been a debate over whether a special permit is required to apply pesticides to water bodies or near water where it is likely that there is drift or runoff into water bodies.

The U.S. Environmental Protection Agency (EPA) has contended that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, addresses these situations and that a special permit is not required.

A lawsuit has been brought against the EPA by advocacy groups claiming

that the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, requires that a National Pollutant Discharge Elimination System (NPDES) permit be issued before a pesticide is applied to water bodies or in such a way that a pesticide is likely to enter the water body.

In Illinois, the Illinois Environmental Protection Agency is the lead state agency for this act and is responsible for issuing NPDES permits.

(Editor's note: In North Dakota, the Department of Health Division of Water Quality has that role.)

COORDINATOR'S COMMENTS

Summer is the time of year when we in the Pesticide Program take stock of the previous training season and prepare for the next. At the time of this writing, we are working on our training schedule for 2009-10. Our plan is to release it by the first week in October. Our first trainings will begin in November and will wrap up in June 2010. Before the training is over, we expect to issue about 2,800 commercial/public/dealer certificates and about 2,700 private certificates.

The numbers are typical for the year. The trend is modestly higher in nearly all categories, but our farm numbers continue to decline (somewhere between 5 percent and 10 percent as compared with the previous cycle). Another area in which we are seeing significant reductions is in grain fumigators, both private and commercial/public/dealer.

Fumigation use is on the decline since the early part of the decade. In recent

times, we keep less grain in long-term storage (fewer opportunities for the insects to infest the grain) and we have better facilities to keep the grain in condition (thus keeping insect populations in check). Another contributing factor is the regulations implemented in 2005 for aluminum phosphide. Rather than ignoring or breaking the laws because of the complicated "*directions for use*" requirements for this popular fumigant, people simply are choosing to drop their certificates and hire out their fumigations. How big of a drop has occurred? In 2000, we had about 2,300 people certified in fumigation. This past year, that number had dwindled to about 1,500.

New state pesticide law effective Aug. 1

As mentioned in the last issue of Pesticide Quarterly, the Legislature passed modest revisions to the Pesticide Act (North Dakota Century Code 4.35). The governor went on to

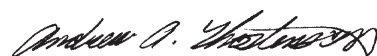
sign the bill and it became law on Aug 1. You can download the text from my Web site at:

www.ag.ndsu.nodak.edu/aginfo/pesticid/pdf/lawpdf/PestAct-4.35—6-8-2009.pdf

Roger Haugen, NDSU Assistant Director of Extension, to Retire Sept. 1

Retirements come and go, but the retirement of Roger Haugen, the NDSU Extension Service's assistant director for agriculture and natural resources, deserves mention. He is my direct boss and has been a member of the Pesticide Certification Advisory Committee for the past several years. He has been a steady, sound and inspiring influence, so his departure will be missed. Thanks, Roger. Enjoy your much-deserved retirement.

All the best,



Andrew A. Thostenson
Pesticide Program Specialist

A similar lawsuit was brought against the EPA several years ago, and the EPA successfully argued that FIFRA regulations were sufficient for pesticide applications to and near water bodies without additional protections offered under the Clean Water Act. The EPA's aquatic pesticide use Final Rule issued Nov. 27, 2006, held that because pesticides are purposefully applied to waters of the United States to manage pests, they are not pollutants.

Recent Court Action

This Final Rule was challenged in the 6th U.S. Circuit Court of Appeals. On Jan. 7, 2009, the court decided that the EPA Final Rule was not a reasonable interpretation of the Clean Water Act and held that NPDES permits are required for:

- All biological pesticide applications that are made in or over (including near) waters of the U.S.
- Chemical pesticide applications that leave a residue or excess pesticide in water when such applications are made in or over (including near) waters of the U.S.

Because irrigation return flows and agricultural runoff are specifically exempted from the Clean Water Act, they are not included in the decision to require NPDES permits.

The EPA chose not to appeal the decision and instead requested a two-year stay, which was granted by the court until April 9, 2011. The two-year period was requested so that a national NPDES template could be constructed, states with NPDES authority would have time to work with their partners to develop appropriate NPDES state permits and there would be time for implementation.

Because only three judges of the 15-member 6th Circuit were involved in vacating the federal rule,

petitioners outside of the EPA have requested an en banc review of the decision by the full court. Although the court has issued the stay, it has not yet made a decision on the request for an en banc review. *(Editor's note: On Aug. 3, 2009, the court denied this request. This can be appealed to the U.S. Supreme Court, but at the time of this writing, I do not know if the petitioners will pursue this action.)*

Pesticide Applications Impacted

Many large categories of mosquito insecticides and aquatic herbicide uses are covered. The EPA estimates that 5.6 million pesticide applications per year by 365,000 applicators will be subject to the court decision. These include 500 different pesticide active ingredients contained in approximately 3,700 product labels.

At least the following large categories are covered by the court's decision when sprayed to, over or near waters of the U.S:

- Mosquito larvicides and adulticides
- Herbicides used to control weeds in lakes and ponds
- Insecticides used in wide-area insect suppression programs
- Herbicides used in wide-area control programs directed at aquatic invasive plant species
- Herbicides, insecticides and other pesticides used in forestry programs when applied over waters of the U.S.
- Products applied to kill fish, mussels or other invasive aquatic species

Clean Water Act and NPDES Permits

The Federal Water Pollution Control Act is administered by the EPA as well. Its objective is to restore and maintain the chemical, physical and biological integrity of the nation's waters by preventing point and

nonpoint pollution sources, providing assistance to publicly owned treatment works for the improvement of wastewater treatment and maintaining the integrity of wetlands.

The National Pollutant Discharge Elimination System (NPDES) program controls direct discharges into navigable waters. Direct discharges or "point source" discharges are from sources such as pipes and sewers. NPDES permits, issued by either the EPA or an authorized state/tribe, contain industry-specific, technology-based and/or water quality-based limits, and establish pollutant monitoring and reporting requirements.

The EPA has authorized 40 states to administer the NPDES program. A facility that intends to discharge into the nation's waters must obtain a permit before initiating a discharge. A permit applicant must provide quantitative analytical data identifying the types of pollutants present in the facility's effluent. The permit then will set forth the conditions and effluent limitations under which a facility may make a discharge.

An NPDES permit also may include discharge limits based on federal or state/tribe water quality criteria or standards that were designed to protect designated uses of surface waters, such as supporting aquatic life or recreation. These standards, unlike the technological standards, generally do not take into account technological feasibility or costs. Water quality criteria and standards vary from state to state (tribe to tribe) and site to site, depending on the use classification of the receiving body of water. Most states/tribes follow EPA guidelines that propose aquatic life and human health criteria for many of the 126 priority pollutants.

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Plastic pesticide containers will be collected for recycling in 13 North Dakota communities in September

South Carolina-based Container Services Network LLC has been contracted by the Ag Container Recycling Council (ACRC) to conduct a North Dakota pesticide recycling effort. Plastic containers up to 55 gallons will be collected. The containers must be triple-rinsed or pressure-rinsed. Labels, caps and foil must be removed from the containers.

Producers must deliver their containers **before the scheduled collection date** and should call the local contact before delivering containers.

A list of dates, locations and local contacts for all North Dakota locations is as follows:

- Tuesday, Sept. 1 – Dakota Ag Cooperative, Mooreton, (701) 274-8231, and Sunrise Spraying Systems, Lisbon, (701) 683-5501
- Wednesday, Sept. 2 – Dakota Plains Cooperative, LaMoure, (701) 883-5108
- Friday, Sept. 4 – Maple River Grain, Lynchburg, (701) 347-5487
- Tuesday, Sept. 8 – Arthur Co., Arthur, (701) 967-8312, and Tall Towers AG, Page, (701) 668-2302
- Wednesday, Sept. 9 – Reynolds United, Portland, (701) 786-3020; Central Valley Aviation, Buxton, (701) 847-2043; and Triangle Ag, Cooperstown, (701) 797-3707
- Friday, Sept. 11 – Schneider Aerial, Rugby, (701) 776-5171
- Monday, Sept. 14 – Rolla Flying Service, Rolla, (701) 477-5145
- Tuesday, Sept. 15 – Arthur Co., Harvey, (701) 324-2248; Farmers Union Oil, Harvey, (701) 324-4450; and Schneider Aerial, Rugby, (701) 776-5171
- Wednesday, Sept. 16 – Farmers Union Oil, Mohall, (701) 756-6814

ACRC is a nonprofit organization that collects and recycles crop protection products or plastic pesticide containers. ACRC member companies formulate, produce, package and distribute crop protection and other pesticide products. For more information, see www.acrecycle.org.

Container Services Network LLC contracts with pesticide manufacturers, dealers and users to provide packaging and recycling solutions. Its web site is at www.container-services-network.com. The sales representative for the North Dakota collection is Laura McKibbin, Container Services Network LLC, P.O. Box 4829, Greenville, SC 29608, telephone: (866) 225-6629.