



**NORTH DAKOTA  
DEPARTMENT OF AGRICULTURE**

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

**Minutes from the April 1, 2011 Meeting of the  
Pesticide Control Board**

The Pesticide Control Board convened on April 1, 2011. Agriculture Commissioner Goehring called the meeting to order at 10:00 am.

Commissioner Goehring participated from the ND Department of Agriculture (NDDA) offices in Bismarck, along NDDA employees Jim Gray, Dave Phillips, Jeremiah Lien, and Blake Schaan. Merlin Leithold (ND Weed Control Association) was also present at the Bismarck location. The two other Board members, NDSU Extension Director Duane Hauck and ND Experiment Station Director Ken Grafton, participated from Morrill Hall on the NDSU campus in Fargo. Other persons present at the Fargo location included Andrew Thostenson (NDSU Pesticide Training and Certification Program), Gary Knutson (ND Ag Association), Jeff Missling (ND Farm Bureau), Stan Wolf (Cass County Weed Control), Nick Sinner (Red River Valley Sugarbeet Growers Association), Greg Mostad (Maple River Grain & Agronomy), and Ben Prather (Cass County Vector Control District).

**Approval of Minutes**

Hauck moved to accept the minutes from the Board's last meeting in October of 2009. Seconded by Grafton. Motion carried.

**Proposed Changes to Pesticide Administrative Rules**

Gray provided a brief update of the October 2009 discussions on proposed changes to the pesticide administrative rules. The board had directed that the NDDA and NDSU work together 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 would decide whether or not to begin the rule-making process. Gray reiterated that the next step was not to make final decisions on the proposed changes, but to decide whether or not to start rule-making. The process for amending administrative rules includes hearings and public comment periods to allow stakeholders to further weigh in on any proposed changes. The process normally takes six to twelve months to complete.

Phillips briefed board members on the proposed changes, referring them to a marked up version of the rules that was distributed several weeks prior to the meeting. Phillips stressed that most of the changes were intended to reword the rules in plain language that is easy to understand. Proposed changes of a more substantive nature included:

- a. *Changing terminology of commercial certification "categories" to "classes"*  
Gray asked why this change was being proposed. Phillips answered that this was due to feedback from the Attorney General's office because the Century Code provides

authority for the Pesticide Control Board to “classify” certifications. Hauck stated that this might cause confusion and asked what impact this could have on outreach materials. Goehring asked that the issue be revisited with the Attorney General.

b. *Change in names of commercial certification classes*

Phillips stated that the current descriptions of the commercial certification classes is vague, leading to questions from applicators on what class they need to be certified in to make certain applications. It is proposed that the “fumigation” classification be re-titled “commodity and structural fumigation” to make it clear that the training covers products used to fumigate structures and stored grains. Persons applying fumigants for burrowing rodent control would be required to be certified in the “vertebrate” class. It is also proposed to re-title the “metam-sodium” classification to “sewer root control”.

c. *Adding military deferment language for private and commercial certification*

This change was originally proposed by Thostenson to allow persons in active duty military service to apply for an extension of their certification status.

d. *Clarification of certification needs for use of fumigants to manage burrowing rodents*

Under the current rules, a person using a fumigant to control burrowing rodents would only need a private general certification or a commercial certification in the Agricultural Pest category. One proposed rule change would require users of fumigants for burrowing rodent control to pass the vertebrate commercial certification exam. Hauck asked if the ranch community was OK with this change. Phillips stated that he had not received any negative feedback. Goehring stated that we need to show activists that we are providing adequate regulation of fumigants for rodent control, and this tighter regulation could keep pesticide tools in the toolbox to manage pests like prairie dogs.

e. *Adding spill kit requirements for applicators*

The rules currently require commercial applicators to have a spill kit available at the mixing and loading site. The proposed changes would add a spill kit requirement for public applicators, applicators operating under direct supervision, or any applicator applying to lands producing agricultural plants exceeding one thousand dollars of market value. Phillips explained that the thousand dollar threshold was meant to differentiate large users from small users, and while the department did not see a need to require spill kits for every pesticide user, there was likely a need for those users applying larger volumes of products. Hauck asked how the NDDA would verify the market value of agricultural plants. Phillips responded that the department would base it on current market prices of commodities. Thostenson raised concerns that the public was already concerned about the SPCC regulations dealing with fuel containment. Hauck asked if there was a way to get people to voluntarily adopt spill kits through outreach. Gray stressed that some growers store and apply larger volumes of pesticides than commercial applicators do and reiterated that the intent was to require spill kits for the larger growers while exempting urban residents and small farms. He asked if the board had a better way to differentiate those persons other than the thousand dollar threshold.

Goehring asked Hauck and Grafton if they wished to remove the proposed change from the document. Both of them said they did wish to remove the spill kit requirements for persons other than commercial or public applicators.

- f. *Adding security requirement for pesticide transportation*  
Phillips stated that there have been a number of incidents in recent years involving unattended pesticides being left on trailers or the back of vehicles parked in public places. New language is proposed to be added under the transportation requirements in the rules to require pesticides in unattended transport vehicle be secured to prevent children, unauthorized persons, or animals from gaining access. Hauck asked what “unattended” meant. Phillips stated that a definition would need to be added to the rules. Thostenson asked if there could be a threshold for when security is required based on a product’s signal word, such as a certain number of gallons for a product with a “Caution” signal word and a different threshold for a product with a “Danger” signal word. Gray stated that this would likely not work because the signal word is based solely on toxicity to humans, and the risk to the environment would also need to be considered.
- g. *Authorization to receive RUPs*  
Based on board discussions in 2009, new language has been added that would allow a person to receive RUPs from a dealer on behalf of a certified applicator. The proposed change would require a dealer to have a completed and signed Authorization to Receive Restricted Use Pesticides form on file for the purchaser for the current year.
- h. *Adoption of federal container and containment regulations*  
Phillips stated that adoption of the federal container regulations is critical and driving the need to go through rule making as soon as possible. A slight change was made to the Century Code last session to give the department access to certain bulk container rinsing records. The proposed changes to the rules would bring our bulk containment and container rules to a level that is equivalent to the federal regulations, allowing us to implement the requirements under state authority. Most of the proposed changes deal with record-keeping and adding protection for appurtenances.
- i. *Removing WPS exemption language*  
When the Worker Protection Standard (WPS) rules were adopted several years ago, language was included that exempted several sections of the federal WPS regulation. The proposed changes would eliminate those exemptions, allowing ND to implement the requirements and regulate under state authority.

Hauck asked Phillips what feedback he had received to date on the proposed changes. Phillips stated that he had hosted a public meeting in Bismarck in November that included a broad audience of 30 people. He also presented the changes to the Ag Coalition in December at a meeting that included approximately 30 agricultural groups. Phillips stated that the overwhelming reaction to the proposed changes has been positive, and any suggested changes have been minor.

Grafton stated that the proposed changes have not been presented to a large enough group of stakeholders. Thostenson suggested going to specific groups for in depth discussions. Hauck stressed the need for a process to get buy-in from the public before the rules go into effect. Gray stressed that this is the purpose of rule-making, and the process is meant to include public comment periods, hearings, and other means to get feedback. Goehring stated that the process would be transparent and open.

Grafton stated that it is better to solicit feedback informally rather than formally. Hauck suggested a strategy in which outreach is done throughout the summer so that the board is ready to start rule-making in the fall. Gray stated that this would mean that the department would be incurring extra cost and burden because they would be going through rule-making twice, once informally and once formally. Gary Knutson stated that the informal process would need to be expedient, perhaps at two or three locations in the state.

### **Certification update and issues**

Thostenson presented an issue paper asking the board to authorize a \$25 late fee for commercial and public applicator/dealer certification sessions starting in the fall. The late fee would apply to persons that fail to pre-register for a training at least ten days prior to the event or if an applicator chooses to register on-site. Thostenson stated that persons who show up to a training event without pre-registration hold up the registration process for other participants. It also makes it difficult to plan for space requirements and the required number of training packets. Hauck moved to approve the request. Grafton seconded. Motion carried.

Lien presented an issue paper asking the board to authorize the creation of a commercial classification that offers specialized training for soil fumigants. Gray stated that Lien has been actively tracking the changes to soil fumigant labels and knows more about the issue than anybody else in the state or the region. Lien stressed that ND is a high use state for metam sodium (used primarily on potatoes), and at least one tree nursery uses dazomet. Under the new label changes, all metam sodium products are classified as RUPs, and none of the existing commercial certification classifications offer the specialized training required for safe use of these products. Lien stated that the regulatory requirements under the new labeling are significant and include such things as buffer zones, monitoring, and notification of neighbors. Gray stated that the NDDA needs some means to verify that soil fumigant users are competent. Thostenson stated that the vast majority of soil fumigant users in ND are from MN, and he wants to see a national soil fumigation category with training materials and exams. Hauck cautioned against getting out in front of EPA and that creating a new category would take a significant amount of work. Lien stated that WI already has a soil fumigant category and ND could likely use their materials as a starting point. Gray stressed that a ND soil fumigant commercial classification is needed regardless of whether or not EPA creates a national category. The board declined to authorize creation of the soil fumigant category. Instead, they advised working with MN in hopes of having materials ready for the 2013 training season.

### **Pesticide enforcement summary**

Gray discussed the federal fiscal year 2010 end of year report that the NDDA submitted to EPA. The NDDA conducted 658 inspections and levied 143 enforcement actions. The most common violations included inadequate record-keeping, drift, failure to comply with PPE requirements on labeling, and non-compliance with fumigation management plans.

### **Other business:** None

Goehring suggested that the board meet again in the fall after outreach has been conducted on proposed rule changes. Grafton moved to adjourn the meeting. Seconded by Hauck. Motion carried.